

73 Am. Jur. 2d Sundays and Holidays Summary

American Jurisprudence, Second Edition | May 2021 Update

Sundays and Holidays

Jack K. Levin, J.D.

[Correlation Table](#)

Summary

Scope:

This article discusses the designation of holidays; laws governing the observance of Sundays and holidays; penal and civil consequences of failure to comply with those laws; the validity and effect of contracts, transactions, and other private acts executed on Sundays and holidays; and the validity and effect of judicial, ministerial, and other official acts and proceedings performed on those days.

This article mentions the federal statute designating holidays for government employees, which may be followed by the states, and discusses various federal constitutional challenges to Sunday closing laws and statutes designating holidays.

Treated Elsewhere:

Acknowledgments made on Sunday, see [Am. Jur. 2d, Acknowledgments § 21](#)

Affidavits; taking on Sunday, see [Am. Jur. 2d, Affidavits § 6](#)

Appeals, questions relating to computation of time involving Sundays and holidays, see [Am. Jur. 2d, Appellate Review § 256](#)

Arrest, permissibility of on Sunday, see [Am. Jur. 2d, Arrest § 72](#)

Computation of time, generally, including the performance of acts or obligations falling on Sundays and holidays and the inclusion or exclusion of intervening Sundays and holidays, see [Am. Jur. 2d, Time §§ 1 et seq.](#)

Gas and oil leases, legal holiday as due date of payment of rentals for, see [Am. Jur. 2d, Gas and Oil § 119](#)

Insurance policies, questions relating to Sundays and holidays, see [Am. Jur. 2d, Insurance §§ 840, 845](#)

Landlord and tenant, questions relating to Sundays and holidays, see [Am. Jur. 2d, Landlord and Tenant § 581](#)

Limitations of actions, questions relating to Sundays or holidays, see [Am. Jur. 2d, Limitation of Actions § 54](#)

Liquor-law enforcement on Sundays and holidays, see [Am. Jur. 2d, Intoxicating Liquors §§ 116, 227, 228](#)

Motion pictures, showing in violation of Sunday law as unlawful assembly, see [Am. Jur. 2d, Mobs and Riots § 26](#)

Overtime pay for work on Sunday or holiday under the Fair Labor Standards Act, see [Am. Jur. 2d, Labor and Labor Relations §§ 3132, 3150](#)

Pleadings, rules applicable in computing the time for filing and service, see [Am. Jur. 2d, Pleading § 861](#)

Process, inclusion of intervening Sundays and holidays in computation for service or return of, see [Am. Jur. 2d, Process § 109](#)

Search warrants, issuance on Sundays, see [Am. Jur. 2d, Searches and Seizures § 209](#)

Statutes, inclusion of Sundays and holidays in the computation of time within which a bill must be approved or rejected, see [Am. Jur. 2d, Statutes §§ 36, 37](#)

Transportation of persons or property by means of ships or vessels, questions relating to Sundays or holidays, see [Am. Jur. 2d, Shipping § 743](#)

Wills, validity of a will executed on Sunday, see [Am. Jur. 2d, Wills § 185](#)

Research References:

Westlaw Databases

[American Law Reports \(ALR\)](#)

[West's A.L.R. Digest \(ALRDIGEST\)](#)

[American Jurisprudence 2d \(AMJUR\)](#)

[American Jurisprudence Pleading and Practice Forms Annotated \(AMJUR-PP\)](#)

[United States Code Annotated \(USCA\)](#)

[Williston on Contracts 4th \(WILLSTN-CN\)](#)

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73 Am. Jur. 2d Sundays and Holidays I Refs.

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I. General Principles

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Research References

West's Key Number Digest

West's Key Number Digest, [Holidays](#) 🔑 1, 3, 5

West's Key Number Digest, [Sunday](#) 🔑 1

A.L.R. Library

A.L.R. Index, Sundays and Holidays

West's A.L.R. Digest, [Holidays](#) 🔑 1, 3, 5

West's A.L.R. Digest, [Sunday](#) 🔑 1

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73 Am. Jur. 2d Sundays and Holidays § 1

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I. General Principles

§ 1. Definitions and distinctions

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West's Key Number Digest

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West's Key Number Digest, [Sunday](#)  1

In the absence of express statutory provisions designating a different period, Sunday is generally regarded as the natural day¹ or 24-hour calendar day² commencing at 12:00 midnight at the end of Saturday and terminating at 12:00 midnight at the beginning of Monday.³

Sunday, the first day of the calendar week,⁴ has been said to be a day of dual character; it is the Christian's day of worship, and it is also the day of rest for people everywhere, irrespective of whether they have a creed or religious belief.⁵ However, the law does not deal with Sunday as a day of worship but only as a day of rest, and Sunday laws regard that day as a day of rest and not its religious character.⁶

Although the words "Sabbath" and "Sunday" are not strictly synonymous, the former signifying Saturday or the seventh day of the week of the Hebrew calendar⁷ and the latter signifying the first day of the week under the Julian calendar, the words "Sabbath," "Sunday," and "Lord's Day" have been considered synonymous.⁸ The term "Sabbatarians" is sometimes used to refer to those persons who observe Saturday as their Sabbath.⁹

A "holiday" is a day set aside for worship, for reverence to the memory of a great leader and benefactor of humanity, to rejoice over some great national or historical event, or to rekindle the flame of an ideal; a "legal holiday" is a day designated by legislative enactment for one or more of such purposes.¹⁰ Saturday is not a common-law holiday, nor is it a statutory holiday in many states.¹¹

Footnotes

- 1 Gillooley v. Vaughn, 92 Fla. 943, 110 So. 653 (1926).
- 2 Gillooley v. Vaughn, 92 Fla. 943, 110 So. 653 (1926); Walinski v. Mayor & Council of City of Gloucester, 25 N.J. Super. 122, 95 A.2d 625 (Ch. Div. 1953).
- 3 Muckenfuss v. State, 55 Tex. Crim. 229, 116 S.W. 51 (1909).
- 4 Walinski v. Mayor & Council of City of Gloucester, 25 N.J. Super. 122, 95 A.2d 625 (Ch. Div. 1953).
- 5 ABC Liquidators, Inc. v. Kansas City, 322 S.W.2d 876 (Mo. 1959).
- 6 § 4.
- 7 Crown Kosher Super Market of Mass., Inc. v. Gallagher, 176 F. Supp. 466 (D. Mass. 1959), judgment rev'd on other grounds, 366 U.S. 617, 81 S. Ct. 1122, 6 L. Ed. 2d 536 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961).
- 8 Rosenbaum v. State, 131 Ark. 251, 199 S.W. 388 (1917); Two Guys From Harrison, Inc. v. Furman, 32 N.J. 199, 160 A.2d 265 (1960).
- 9 State v. Target Stores, Inc., 279 Minn. 447, 156 N.W.2d 908 (1968).
- 10 Vidal v. Backs, 218 Cal. 99, 21 P.2d 952, 86 A.L.R. 1134 (1933).
- 11 As to designation of holidays, see § 2.
Riggs v. Bartlett, 286 S.W.2d 669 (Tex. Civ. App. Dallas 1956), writ refused n.r.e.

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73 Am. Jur. 2d Sundays and Holidays § 2

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I. General Principles

§ 2. Designation of holidays

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West's Key Number Digest

West's Key Number Digest, [Holidays](#)  1, 3, 5

The federal statute on government employees specifies the legal public holidays, and rules applying to pay and leave for federal employees when a holiday falls on a weekend or the like.¹ The President's Executive Order with regard to how federal employees are to be compensated on legal holidays or other days designated as a holiday by federal statute or executive order has been construed as declaring a legal holiday for other purposes.²

Observation:

When the President closes the government for celebratory or commemorative reasons, rather than because of some public emergency, the presumption is that the President has declared a legal holiday.³

In most states, the statutes specifically enumerate the legal holidays to be observed within the particular jurisdiction and usually include such general or special holidays proclaimed by the President of the United States or the governor of the state by virtue of statutory authority to do so.⁴ A day of religious observance is not deemed a public holiday unless so proclaimed by the President or the governor of a state.⁵

A state statute designating legal holidays to be observed by municipal offices did not prevent a city from adding others.⁶ A state statute may not be exclusive nor exhaustive with respect to holidays recognized by courts,⁷ and a chief judge may designate what days are legal holidays for the purpose of that court⁸ although that power may be limited to emergency situations.⁹

Statutes generally provide that when a legal holiday falls on a Sunday, the Monday next following will be the legal holiday.¹⁰ In other states, it is not so considered except for certain matters falling within some special statute.¹¹

A general holiday may be identified by a request that it should be observed by all people, generally. In contrast, a "holiday in the state" and a "legal holiday," on which all state offices are closed, are created by reference to specific statutes or by words having that effect.¹²

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Footnotes

- 1 5 U.S.C.A. § 6103.
- 2 *Hart v. Sheahan*, 396 F.3d 887, 66 Fed. R. Evid. Serv. 425 (7th Cir. 2005) (with regard to computing time to file a motion).
- 3 *Hart v. Sheahan*, 396 F.3d 887, 66 Fed. R. Evid. Serv. 425 (7th Cir. 2005).
- 4 *Vidal v. Backs*, 218 Cal. 99, 21 P.2d 952, 86 A.L.R. 1134 (1933).
- 5 *Bloom v. New York City Transit Authority*, 19 A.D.2d 521, 240 N.Y.S.2d 124 (1st Dep't 1963).
- 6 *Stanley v. Genesee County Clerk*, 258 Mich. App. 215, 671 N.W.2d 116 (2003) (New Year's Eve).
- 7 *Dwyer v. Duffy*, 426 F.3d 1041 (9th Cir. 2005) (California statute).
- 8 *R.J. Reynolds Tobacco Co. v. Kenyon*, 826 So. 2d 370 (Fla. 2d DCA 2002) (local administrative order declaring Christmas Eve a legal holiday; thus, it was not the last day for serving a motion).
- 9 *Wright v. St. Landry Public Housing Corp.*, 949 So. 2d 659 (La. Ct. App. 3d Cir. 2007).
- 10 *Azalea Homes v. Makela*, 77 So. 2d 451 (Fla. 1955); *Davidson v. Munsey*, 27 Utah 87, 74 P. 431 (1903).
- 11 *Reid v. Keys*, 112 Neb. 242, 199 N.W. 533 (1924).
- 12 *Los Angeles City Employees Union v. City of El Monte*, 177 Cal. App. 3d 615, 220 Cal. Rptr. 411 (2d Dist. 1985), writ denied, (Feb. 14, 1986).

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73 Am. Jur. 2d Sundays and Holidays II A Refs.

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II. Restrictions on Activities on Sundays and Holidays

A. Overview

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Research References

West's Key Number Digest

West's Key Number Digest, [Holidays](#) 🔑1, 4

West's Key Number Digest, [Sunday](#) 🔑2

A.L.R. Library

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West's A.L.R. Digest, [Holidays](#) 🔑1

West's A.L.R. Digest, [Sunday](#) 🔑2

Forms

[Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 10](#)

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73 Am. Jur. 2d Sundays and Holidays § 3

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§ 3. Generally

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West's Key Number Digest

West's Key Number Digest, [Holidays](#)  4

West's Key Number Digest, [Sunday](#)  2

A.L.R. Library

[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

At common law, with the exception of judicial acts,¹ anything may be done on Sunday that may lawfully be performed on any other day of the week.²

Observation:

Laws that prohibit doing certain acts on Sunday and impose sanctions for violations are commonly called "Sunday statutes,"³ "blue laws,"⁴ "Sunday closing laws,"⁵ or "Lord's Day acts."⁶ While "blue laws" are held in popular disdain,⁷ some Sunday laws persist.⁸

On a holiday, any business may be transacted except that which is positively forbidden.⁹ A statutory list of holidays is a list of legal holidays for commercial and banking purposes only.¹⁰

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Footnotes

- 1 U.S. v. Shields, 153 U.S. 88, 14 S. Ct. 735, 38 L. Ed. 645 (1894); Pedersen v. Logan Square State & Sav. Bank, 377 Ill. 408, 36 N.E.2d 732 (1941).
- 2 Shubert Theatrical Co. v. Rath, 271 F. 827, 20 A.L.R. 846 (C.C.A. 2d Cir. 1921).
- 3 Barsky v. Hansen, 311 Mass. 14, 40 N.E.2d 12 (1942).
- 4 Kirk v. Olgiati, 203 Tenn. 1, 308 S.W.2d 471 (1957).
- 5 Henderson v. Antonacci, 62 So. 2d 5 (Fla. 1952).
- 6 Crown Kosher Super Market of Mass., Inc. v. Gallagher, 176 F. Supp. 466 (D. Mass. 1959), judgment rev'd on other grounds, 366 U.S. 617, 81 S. Ct. 1122, 6 L. Ed. 2d 536 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961).
- 7 People v. Abrahams, 40 N.Y.2d 277, 386 N.Y.S.2d 661, 353 N.E.2d 574 (1976).
- 8 Kittery Motorcycle, Inc. v. Rowe, 320 F.3d 42 (1st Cir. 2003) (determining validity of Maine Sunday closing law); Hartley Hill Hunt Club v. County Com'n of Ritchie County, 220 W. Va. 382, 647 S.E.2d 818 (2007) (statute allowing local option election to ban hunting on Sunday).
- 9 McLaughlin v. Houston-Hudson Lumber Co., 1912 OK 50, 31 Okla. 182, 120 P. 659 (1912).
- 10 League of Women Voters v. Renfro, 292 Ala. 128, 290 So. 2d 167 (1974).

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A. Overview

§ 4. Policy and purpose

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[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

The legal justification for Sunday statutes is that they are essentially of a secular rather than a religious character, their purpose being to provide a uniform day of rest,¹ recreation,² and quiet,³ and to prevent interference with the rights of those who choose to assemble for public worship.⁴ The fact that the day that has been selected by the legislature is Sunday, a day of particular significance to the dominant Christian sects, does not bar the state from achieving its secular goals.⁵

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Footnotes

- 1 [Hennington v. State of Ga.](#), 163 U.S. 299, 16 S. Ct. 1086, 41 L. Ed. 166 (1896); [Providence Square Associates, L.L.C. v. G.D.F., Inc.](#), 211 F.3d 846 (4th Cir. 2000) (stating that the purposes of blue laws are to provide a day of rest for persons and to prevent physical and moral debasement from uninterrupted labor); [Discount Records, Inc. v. City of North Little Rock](#), 671 F.2d 1220 (8th Cir. 1982); [State v. S. S. Kresge, Inc.](#), 364 A.2d 868 (Me. 1976); [Supermarkets General Corp. v. State](#), 286 Md. 611, 409 A.2d 250 (1979); [Chebacco Liquor Mart, Inc. v. Alcoholic Beverages Control Com'n](#), 429 Mass. 721, 711 N.E.2d 135 (1999);

Paramount-Richards Theatres v. City of Hattiesburg, 210 Miss. 271, 49 So. 2d 574 (1950); ABC Liquidators, Inc. v. Kansas City, 322 S.W.2d 876 (Mo. 1959); State v. Rogers, 105 N.H. 366, 200 A.2d 740 (1964); Two Guys From Harrison, Inc. v. Furman, 32 N.J. 199, 160 A.2d 265 (1960); State v. McGee, 237 N.C. 633, 75 S.E.2d 783 (1953).

2 State v. Gorra Bros., Inc., 4 Conn. Cir. Ct. 488, 236 A.2d 345 (App. Div. 1967).

3 Auto-Rite Supply Co. v. Mayor and Township Committeemen of Woodbridge Tp., 25 N.J. 188, 135 A.2d 515 (1957).

4 Bertera's Hopewell Foodland, Inc. v. Masters, 428 Pa. 20, 236 A.2d 197 (1967) (overruled on other grounds by, Goodman v. Kennedy, 459 Pa. 313, 329 A.2d 224 (1974)).

5 McGowan v. State of Md., 366 U.S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961); Judefind v. State, 78 Md. 510, 28 A. 405 (1894); Raleigh Mobile Home Sales, Inc. v. Tomlinson, 276 N.C. 661, 174 S.E.2d 542 (1970).

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73 Am. Jur. 2d Sundays and Holidays § 5

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II. Restrictions on Activities on Sundays and Holidays

A. Overview

§ 5. Power of state

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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West's Key Number Digest, [Sunday](#)  2

A.L.R. Library

[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

The State has the power to provide a weekly respite from all labor and, at the same time, to set one day of the week apart from the others as a day of rest and recreation.¹ Sunday closing laws, in their objectives, fall within the general legislative power to determine what is reasonably required to promote the public health, safety, and general welfare.² The adoption of such laws is uniformly recognized as a legitimate exercise of the police power.³ It is discretionary with the legislative authority to select the length of the interval and the day on which that rest may be taken,⁴ and, in making its choice, the legislature may take into account the fact that Sunday is the day of the week that a great proportion of the people would observe as a day of rest apart from legislation.⁵

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Footnotes

- ¹ [Braunfeld v. Brown](#), 366 U.S. 599, 81 S. Ct. 1144, 6 L. Ed. 2d 563 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961); [McGowan v. State of Md.](#), 366 U.S. 420, 81 S. Ct. 1101,

6 L. Ed. 2d 393 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961); Goodman v. Kennedy, 459 Pa. 313, 329 A.2d 224 (1974); State v. Grabinski, 33 Wash. 2d 603, 206 P.2d 1022 (1949).

2 Caldor's, Inc. v. Bedding Barn, Inc., 177 Conn. 304, 417 A.2d 343, 10 A.L.R.4th 230 (1979); Division of Pari-Mutuel Wagering Dept. of Business Regulation v. Florida Horse Council, Inc., 464 So. 2d 128 (Fla. 1985) (upholding Sunday racing and betting restrictions).

3 § 9.

4 Lane v. McFadyen, 259 Ala. 205, 66 So. 2d 83 (1953); Two Guys From Harrison, Inc. v. Furman, 32 N.J. 199, 160 A.2d 265 (1960).

5 Raleigh Mobile Home Sales, Inc. v. Tomlinson, 276 N.C. 661, 174 S.E.2d 542 (1970).

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73 Am. Jur. 2d Sundays and Holidays § 6

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A. Overview

§ 6. Local ordinances

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West's Key Number Digest

West's Key Number Digest, [Holidays](#) 1

West's Key Number Digest, [Sunday](#) 2

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[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

While a municipal corporation does not have the inherent authority to make laws or adopt regulations with respect to Sunday activities, where it is a government of enumerated powers,¹ the power to make local regulations having the force of law in localities may, either expressly² or by necessary implication,³ be committed to local authorities.⁴ The adoption of statutes with statewide application will not necessarily invalidate local Sunday law restrictions.⁵

The propriety of granting municipal corporations the power to enforce Sunday ordinances is recognized on the theory that the proper body to define violations pertaining to that day is the local authority in touch with the public sentiment of its community.⁶ Thus, with regard to Sunday observance regulations, a State may grant exclusive power to municipal corporations,⁷ including the power to suspend⁸ or adopt blue laws.⁹

Regulations adopted by municipalities with respect to Sunday observance must relate to the aims of the legislature, and neither violate constitutional guarantees or prohibitions nor be conflict with general state laws,¹⁰ and they may not unreasonably discriminate.¹¹

The power conferred on localities may be exercised in many ways, such as by prohibiting or regulating work and labor¹² or placing restrictions on the operation of places of amusement,¹³ including adult bookstores,¹⁴ on Sunday.

A municipal corporation exceeds its legislative authority to enact ordinances under the police power by extending Sunday observance laws beyond Sunday hours.¹⁵

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Footnotes

- 1 [Auto-Rite Supply Co. v. Mayor and Township Committeemen of Woodbridge Tp.](#), 25 N.J. 188, 135 A.2d 515 (1957); [State v. McGee](#), 237 N.C. 633, 75 S.E.2d 783 (1953).
- 2 [State v. Trantham](#), 230 N.C. 641, 55 S.E.2d 198 (1949); [Hartley Hill Hunt Club v. County Com'n of Ritchie County](#), 220 W. Va. 382, 647 S.E.2d 818 (2007) (statute allowing local option election to ban hunting on Sunday was a proper delegation of the legislature's power to counties).
- 3 [Arrigo v. City of Lincoln](#), 154 Neb. 537, 48 N.W.2d 643 (1951); [Hertz Washmobile System v. Village of South Orange](#), 41 N.J. Super. 110, 124 A.2d 68 (Law Div. 1956), judgment aff'd, 25 N.J. 207, 135 A.2d 524 (1957); [Gronlund v. Salt Lake City](#), 113 Utah 284, 194 P.2d 464 (1948).
- 4 [State v. Rogers](#), 105 N.H. 366, 200 A.2d 740 (1964).
- 5 [Kilpatrick v. State](#), 243 Ga. 799, 256 S.E.2d 900 (1979) (holding that by the adoption of an act establishing state policy to provide for holding of athletic events, games, and contests on Sundays, the legislature did not intend to repeal by implication all or even most of the so-called blue laws or Sunday prohibitions, including the prohibition on the operation of billiard tables on Sunday).
- 6 [City of Tupelo v. Walton](#), 237 Miss. 892, 116 So. 2d 808, 76 A.L.R.2d 870 (1960).
- 7 [Supermarkets General Corp. v. State](#), 286 Md. 611, 409 A.2d 250 (1979); [City of Jackson v. Luckett](#), 336 So. 2d 776 (Miss. 1976); [State v. Kessells](#), 120 Mo. App. 233, 96 S.W. 494 (1906).
- 8 [State v. Rogers](#), 105 N.H. 366, 200 A.2d 740 (1964).
- 9 [Two Guys From Harrison, Inc. v. Furman](#), 32 N.J. 199, 160 A.2d 265 (1960) (upholding a provision in a Sunday closing statute that it would not become operative in any locality unless the voters, in a referendum, vote affirmatively for its application to that locality).
- 10 [City of Mt. Vernon v. Julian](#), 369 Ill. 447, 17 N.E.2d 52, 119 A.L.R. 747 (1938); [National Food Stores of Louisiana, Inc. v. Cefalu](#), 280 So. 2d 903 (La. 1973); [Skag-Way Dept. Stores, Inc. v. City of Grand Island](#), 176 Neb. 169, 125 N.W.2d 529 (1964).
Conflict with state law is further discussed in § 7.
- 11 [Humphrey Chevrolet, Inc. v. City of Evanston](#), 7 Ill. 2d 402, 131 N.E.2d 70, 57 A.L.R.2d 969 (1955); [Bothwell v. City of York](#), 291 Pa. 363, 140 A. 130 (1927).
As to the validity of local ordinances, generally, see § 10.
As to equal protection concerns, see §§ 15 et seq.
- 12 [State ex rel. Smith v. Wertz](#), 91 W. Va. 622, 114 S.E. 242, 29 A.L.R. 391 (1922).
- 13 [Power v. Nordstrom](#), 150 Minn. 228, 184 N.W. 967, 18 A.L.R. 733 (1921).
- 14 [Star Satellite, Inc. v. City of Biloxi](#), 779 F.2d 1074 (5th Cir. 1986) (involving a bookstore selling only films, videotapes, and video recordings).
- 15 [Spann v. Gaither](#), 152 Md. 1, 136 A. 41, 50 A.L.R. 620 (1927).

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73 Am. Jur. 2d Sundays and Holidays § 7

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A. Overview

§ 7. Local ordinances—Conflict with statutes

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[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status](#), 10 A.L.R.4th 246

Forms

[Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 10](#) (Complaint, petition, or declaration—To restrain city from enforcing ordinance making operation of business on Sunday a misdemeanor—Ordinance conflicts with state law)

Ordinances relating to Sunday observance must be in harmony with the general laws and public policy of the state;¹ otherwise, they are void and of no effect.²

Although an ordinance may not authorize on Sunday what a statute forbids, or forbid what a statute expressly permits,³ an ordinance may supplement a statute or cover an authorized field of local legislation not occupied by general legislation.⁴ The fact that there is a state law on the same subject as that covered by a municipal ordinance relating to Sunday observance does

not render the ordinance invalid provided that the municipality has authority to legislate with regard to the subject and the legislation is not in conflict with the state enactment.⁵

An ordinance may validly impose greater penalties for doing some acts on Sunday than those provided by state Sunday statutes.⁶ Also, where the state Sunday statute is not criminal but civil in nature, an ordinance that provides for a fine in an amount exceeding the civil penalty provided in the state statute is not in conflict with the state law.⁷

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Footnotes

- 1 [Power v. Nordstrom](#), 150 Minn. 228, 184 N.W. 967, 18 A.L.R. 733 (1921); [State v. Rogers](#), 105 N.H. 366, 200 A.2d 740 (1964).
- 2 [Auto-Rite Supply Co. v. Mayor and Township Committeemen of Woodbridge Tp.](#), 25 N.J. 188, 135 A.2d 515 (1957).
- 3 [House v. City of Topeka](#), 178 Kan. 284, 286 P.2d 180 (1955); [Block v. Crockett](#), 61 W. Va. 421, 56 S.E. 826 (1907).
- 4 [Town of Van Buren v. Wells](#), 53 Ark. 368, 14 S.W. 38 (1890); [Mack Paramus Co. v. Mayor and Council of Borough of Paramus](#), 103 N.J. 564, 511 A.2d 1179 (1986) (holding that a New Jersey blue law did not preempt a local Sunday closing regulation prohibiting particular activities on Sunday in a manner different from that expressed by state law).
- 5 [People's Appliance & Furniture, Inc. v. City of Flint](#), 358 Mich. 34, 99 N.W.2d 522 (1959); [Hertz Washmobile System v. Village of South Orange](#), 41 N.J. Super. 110, 124 A.2d 68 (Law Div. 1956), judgment aff'd, 25 N.J. 207, 135 A.2d 524 (1957); [Kirk v. Olgiati](#), 203 Tenn. 1, 308 S.W.2d 471 (1957).
- 6 [City of St. Louis v. De Lassus](#), 205 Mo. 578, 104 S.W. 12 (1907) (overruled in part on other grounds by, [McKaig v. Kansas City](#), 363 Mo. 1033, 256 S.W.2d 815 (1953)).
- 7 [People's Appliance & Furniture, Inc. v. City of Flint](#), 358 Mich. 34, 99 N.W.2d 522 (1959).

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73 Am. Jur. 2d Sundays and Holidays § 8

American Jurisprudence, Second Edition | May 2021 Update

Sundays and Holidays

Jack K. Levin, J.D.

II. Restrictions on Activities on Sundays and Holidays

A. Overview

§ 8. Construction of statutes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Sunday](#)  2

A.L.R. Library

[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

The general rules of statutory construction apply to Sunday observance laws.¹ This includes the rules of "ejusdem generis"² and "in pari materia,"³ as well as the rule that the enumeration of specific exceptions is indicative of a legislative intention not to permit other exceptions, and usually no other exceptions will be implied;⁴ that generic terms used in a statute should be given their ordinary or usual significance;⁵ and that a construction that will produce an unconstitutional result is not favored.⁶

Sunday laws should be given a reasonable construction⁷ and applied so as to promote the ends for which they were intended.⁸

Because Sunday laws are generally penal in their nature,⁹ the rules applicable to the construction of other criminal statutes must be applied to them.¹⁰ Hence, they will be construed strictly against the State¹¹ and will not be extended by construction beyond their plain import,¹² such as by supplying omissions or inserting exemptions not made by the legislature.¹³

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Footnotes

- 1 State v. Sopher, 25 Utah 318, 71 P. 482 (1903).
- 2 State v. Prather, 79 Kan. 513, 100 P. 57 (1909); State v. Chamberlain, 112 Minn. 52, 127 N.W. 444 (1910);
State v. Patrignani, 65 N.J. Super. 303, 167 A.2d 671 (County Ct. 1961).
- 3 Carolina Amusement Co. v. Martin, 236 S.C. 558, 115 S.E.2d 273 (1960).
- 4 Broadbent v. Gibson, 105 Utah 53, 140 P.2d 939 (1943).

An amendment to a Sunday closing law that allowed retail stores larger than a specified square footage to be open on Sundays, provided that they did not require that their employees work that day, did not impliedly repeal the law's explicit prohibition of motor vehicle sales on Sunday; rather, retailers whose merchandise included motor vehicles and who qualified under the exception could be open on Sunday, but they could not sell motor vehicles. *Kittery Motorcycle, Inc. v. Rowe*, 320 F.3d 42 (1st Cir. 2003) (construing Maine statute).
- 5 Worley v. State, 79 Ga. App. 594, 54 S.E.2d 439 (1949).
- 6 State v. Target Stores, Inc., 279 Minn. 447, 156 N.W.2d 908 (1968).
- 7 Judefind v. State, 78 Md. 510, 28 A. 405 (1894); Pirkey Bros. v. Commonwealth, 134 Va. 713, 114 S.E. 764, 29 A.L.R. 1290 (1922).
- 8 State v. K-Mart, 134 N.J. Super. 76, 338 A.2d 230 (County Ct. 1975), judgment aff'd, 141 N.J. Super. 546, 359 A.2d 492 (App. Div. 1976); State v. Corologos, 101 Vt. 300, 143 A. 284, 59 A.L.R. 1541 (1928).
- 9 State v. Thomas, 61 Ohio St. 444, 56 N.E. 276 (1900).
- 10 Piggly-Wiggly of Jacksonville, Inc. v. City of Jacksonville, 336 So. 2d 1078 (Ala. 1976); Pirkey Bros. v. Commonwealth, 134 Va. 713, 114 S.E. 764, 29 A.L.R. 1290 (1922).
- 11 State v. Katz Drug Co., 352 S.W.2d 678 (Mo. 1961) (overruled in part on other grounds by, *Harvey v. Priest*, 366 S.W.2d 324 (Mo. 1963)).
- 12 Jackson v. State, 30 Ala. App. 114, 1 So. 2d 601 (1941); Village of River Forest v. Vignola, 23 Ill. 2d 411, 178 N.E.2d 364 (1961); Territory v. Davenport, 17 N.M. 214, 124 P. 795 (1912); State v. Thomas, 61 Ohio St. 444, 56 N.E. 276 (1900).
- 13 Giant of Maryland, Inc. v. State's Attorney for Prince George's County, 267 Md. 501, 298 A.2d 427 (1973).

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73 Am. Jur. 2d Sundays and Holidays II B Refs.

American Jurisprudence, Second Edition | May 2021 Update

Sundays and Holidays

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II. Restrictions on Activities on Sundays and Holidays

B. Validity

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Holidays](#) 🔑1

West's Key Number Digest, [Sunday](#) 🔑2, 5, 6(1)

A.L.R. Library

A.L.R. Index, Sundays and Holidays

West's A.L.R. Digest, [Holidays](#) 🔑1

West's A.L.R. Digest, [Sunday](#) 🔑2, 5, 6(1)

Forms

[Am. Jur. Pleading and Practice Forms, Sundays and Holidays §§ 10, 11](#)

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73 Am. Jur. 2d Sundays and Holidays § 9

American Jurisprudence, Second Edition | May 2021 Update

Sundays and Holidays

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II. Restrictions on Activities on Sundays and Holidays

B. Validity

1. In General

§ 9. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Sunday](#)  2

A.L.R. Library

[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

If Sunday closing laws are to pass constitutional scrutiny, they must be a valid exercise of the State's police power and must be rationally related to a legitimate state purpose; specifically, they must bear a rational relationship to the public health, safety, morals, or general welfare of the citizenry,¹ and courts have recognized the validity of Sunday statutes as civil, municipal, or police regulations.² In determining the validity of a Sunday closing ordinance, the court's function is to ascertain from the words of the law itself whether constitutional restraints have been exceeded, which question is of law and not of fact.³

Sunday closing laws are not unconstitutional per se.⁴ Indeed, the general tendency has been to sustain the statutes' constitutionality as a legitimate exercise of the police power.⁵ Sunday statutes have withstood attack on the grounds that—

— they violate the rights of life, liberty, and property, or the pursuit of happiness.⁶

— they constitute special or local legislation.⁷

- they violate the constitutional guarantee of free speech.⁸
 - they are a restraint on interstate commerce.⁹
 - they violate the separation of powers of the legislature and the judiciary.¹⁰
 - they are obsolete.¹¹
 - they have not been enforced or have been ignored for many years.¹²
 - they do not serve legitimate state objectives.¹³
 - they are preempted by federal antitrust laws.¹⁴
 - there has been discrimination in their substance¹⁵ and enforcement.¹⁶
 - a statute authorizing local option elections to determine whether to prohibit Sunday hunting on privately owned land violates a state constitutional right to bear arms for "lawful hunting."¹⁷
- The designation by the legislature of three holidays, in addition to Sundays, as days when places of business may not be kept open to the public does not pose any constitutional problem.¹⁸

On the other hand, several Sunday statutes prohibiting certain other activities have been declared invalid as class legislation,¹⁹ as unjustly discriminatory,²⁰ as special laws for the punishment of crimes and misdemeanors, where general laws are applicable, in violation of state constitutional provisions,²¹ or as a prior restraint on the freedom of speech.²²

Where an amendatory statute is declared unconstitutional, the Sunday closing statutes, as they existed before the amendment, become effective by operation of law unless they are also declared unconstitutional in an appropriate action.²³

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Footnotes

- 1 [Division of Pari-Mutuel Wagering Dept. of Business Regulation v. Florida Horse Council, Inc.](#), 464 So. 2d 128 (Fla. 1985).
- 2 [Hennington v. State of Ga.](#), 163 U.S. 299, 16 S. Ct. 1086, 41 L. Ed. 166 (1896); [Arrigo v. City of Lincoln](#), 154 Neb. 537, 48 N.W.2d 643 (1951).
- 3 [Pacesetter Homes, Inc. v. Village of South Holland](#), 18 Ill. 2d 247, 163 N.E.2d 464 (1959).
- 4 [Lakeside Imports, Inc. v. State](#), 639 So. 2d 253 (La. 1994).
- 5 [Petit v. State of Minn.](#), 177 U.S. 164, 20 S. Ct. 666, 44 L. Ed. 716 (1900); [State v. Gorra Bros., Inc.](#), 4 Conn. Cir. Ct. 488, 236 A.2d 345 (App. Div. 1967); [Lakeside Imports, Inc. v. State](#), 634 So. 2d 891 (La. Ct. App. 1st Cir. 1993), writ granted, 635 So. 2d 1103 (La. 1994) and judgment aff'd, 639 So. 2d 253 (La. 1994); [State v. Kidd](#), 167 Ohio St. 521, 5 Ohio Op. 2d 202, 150 N.E.2d 413 (1958); [Rich v. Com.](#), 198 Va. 445, 94 S.E.2d 549 (1956).
- 6 [State v. Dolan](#), 13 Idaho 693, 92 P. 995 (1907); [State v. Haining](#), 131 Kan. 853, 293 P. 952 (1930).
- 7 [State v. Dolan](#), 13 Idaho 693, 92 P. 995 (1907); [Benderson Development Co., Inc. v. Sciortino](#), 236 Va. 136, 372 S.E.2d 751 (1988).
- 8 [Carolina Amusement Co. v. Martin](#), 236 S.C. 558, 115 S.E.2d 273 (1960).
- 9 [Hennington v. State of Ga.](#), 163 U.S. 299, 16 S. Ct. 1086, 41 L. Ed. 166 (1896); [Boynton v. Fox West Coast Theatres Corporation](#), 60 F.2d 851 (C.C.A. 10th Cir. 1932); [Best Products Co., Inc. v. Spaeth](#), 461 N.W.2d

91 (N.D. 1990); Retail Merchants Ass'n of Houston, Inc. v. Handy Dan Hardware, Inc., 696 S.W.2d 44 (Tex. App. Houston 1st Dist. 1985).

State v. Katz Drug Co., 352 S.W.2d 678 (Mo. 1961) (overruled in part on other grounds by, Harvey v. Priest, 366 S.W.2d 324 (Mo. 1963)).

State v. Hill, 189 Kan. 403, 369 P.2d 365, 91 A.L.R.2d 750 (1962); State v. Kidd, 167 Ohio St. 521, 5 Ohio Op. 2d 202, 150 N.E.2d 413 (1958).

Arrigo v. City of Lincoln, 154 Neb. 537, 48 N.W.2d 643 (1951); State v. Grabinski, 33 Wash. 2d 603, 206 P.2d 1022 (1949).

Lakeside Imports, Inc. v. State, 639 So. 2d 253 (La. 1994).

Gibson Distributing Co., Inc. v. Downtown Development Ass'n of El Paso, Inc., 572 S.W.2d 334 (Tex. 1978).

Giant of Maryland, Inc. v. State's Attorney for Prince George's County, 267 Md. 501, 298 A.2d 427 (1973).

Arrigo v. City of Lincoln, 154 Neb. 537, 48 N.W.2d 643 (1951); People v. Friedman, 302 N.Y. 75, 96 N.E.2d 184 (1950).

Hartley Hill Hunt Club v. County Com'n of Ritchie County, 220 W. Va. 382, 647 S.E.2d 818 (2007).

Opinion of the Justices, 108 N.H. 103, 229 A.2d 188 (1967).

McKaig v. Kansas City, 363 Mo. 1033, 256 S.W.2d 815 (1953).

Henderson v. Antonacci, 62 So. 2d 5 (Fla. 1952); Skag-Way Dept. Stores, Inc. v. City of Grand Island, 176 Neb. 169, 125 N.W.2d 529 (1964).

As to equal protection challenges, see §§ 15 et seq.

Armstrong v. State, 170 Ind. 188, 84 N.E. 3 (1908).

Brattle Films, Inc. v. Commissioner of Public Safety, 333 Mass. 58, 127 N.E.2d 891 (1955).

Henderson v. Antonacci, 62 So. 2d 5 (Fla. 1952).

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73 Am. Jur. 2d Sundays and Holidays § 10

American Jurisprudence, Second Edition | May 2021 Update

Sundays and Holidays

Jack K. Levin, J.D.

II. Restrictions on Activities on Sundays and Holidays

B. Validity

1. In General

§ 10. Validity of local ordinances

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Holidays](#)  1

West's Key Number Digest, [Sunday](#)  2

A.L.R. Library

[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

In connection with the exercise of the police power, a municipal body may classify occupations, businesses, and activities provided that the classification rests on a reasonable basis¹ and operates equally on every activity falling within each class, and the prohibition has both a reasonable and rational relationship toward fostering or preserving public peace, health, safety, morals, or welfare.² It is not required for the validity of an ordinance prohibiting worldly employment or business on Sunday that it be for the protection of the health, welfare, safety, or morals of employees or workers as opposed to that of all the citizens of the municipality.³ However, a Sunday closing ordinance may not prohibit that which is harmless in itself or require to be done what does not tend to promote the health, comfort, safety, or welfare of society; furthermore, a business or occupation that does not have a tendency to affect or endanger the public in connection with health, safety, morals, or general welfare is not within the police power.⁴

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Footnotes

- 1 [Pacesetter Homes, Inc. v. Village of South Holland, 18 Ill. 2d 247, 163 N.E.2d 464 \(1959\); Com. v. Arlan's Dept. Store of Louisville, 357 S.W.2d 708 \(Ky. 1962\).](#)
- 2 [Spokane County v. Valu-Mart, Inc., 69 Wash. 2d 712, 419 P.2d 993 \(1966\).](#)
- 3 [Town of West Orange v. Carr's Dept. Store, 53 N.J. Super. 237, 147 A.2d 97 \(County Ct. 1958\).](#)
- 4 [Skag-Way Dept. Stores, Inc. v. City of Grand Island, 176 Neb. 169, 125 N.W.2d 529 \(1964\); Town of Newbern v. McCann, 105 Tenn. 159, 58 S.W. 114 \(1900\).](#)

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73 Am. Jur. 2d Sundays and Holidays § 11

American Jurisprudence, Second Edition | May 2021 Update

Sundays and Holidays

Jack K. Levin, J.D.

II. Restrictions on Activities on Sundays and Holidays

B. Validity

1. In General

§ 11. Religious grounds

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Sunday](#)  2

A.L.R. Library

[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

Sunday laws do not violate the First Amendment to the United States Constitution as they do not establish a church, make attendance at religious worship compulsory, impose restrictions on expression of religious belief, work a restriction on the exercise of religion according to the dictates of one's conscience, provide compulsory support of religious institutions by taxation or otherwise, or in any way enforce or prohibit religion.¹ Similarly, Sunday laws do not necessarily violate the establishment clause of state constitutions.² Nevertheless, Sunday legislation may violate the Establishment Clause if it can be demonstrated that the purpose of the legislation, evidenced either on the face of the legislation, in conjunction with its legislative history, or in its operative effect, is to use the State's coercive power to aid religion; however, a statute will be sustained where its purpose and effect is not to aid religion but to set aside a day of rest and recreation.³ In determining whether the purpose behind a state's Sunday closing law is religious, relevant factors are the language of the statute itself, the legislative history, and characterization given to the statute by state courts.⁴

The exemption of "other work of necessity or charity" in a Sunday closing statute⁵ is not subject to constitutional challenge as depending on the religious philosophy of the particular judge or jury trying the case.⁶

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Footnotes

- 1 [People v. Friedman](#), 302 N.Y. 75, 96 N.E.2d 184 (1950); [Raleigh Mobile Home Sales, Inc. v. Tomlinson](#), 276 N.C. 661, 174 S.E.2d 542 (1970); [State v. Grabinski](#), 33 Wash. 2d 603, 206 P.2d 1022 (1949).
- 2 [Opyt's Amoco, Inc. v. Village of South Holland](#), 209 Ill. App. 3d 473, 154 Ill. Dec. 260, 568 N.E.2d 260 (1st Dist. 1991), judgment [aff'd](#), 149 Ill. 2d 265, 172 Ill. Dec. 390, 595 N.E.2d 1060 (1992).
- 3 [Gallagher v. Crown Kasher Super Market of Mass., Inc.](#), 366 U.S. 617, 81 S. Ct. 1122, 6 L. Ed. 2d 536 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961); [Braunfeld v. Brown](#), 366 U.S. 599, 81 S. Ct. 1144, 6 L. Ed. 2d 563 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961); [Two Guys From Harrison-Allentown, Inc. v. McGinley](#), 366 U.S. 582, 81 S. Ct. 1135, 6 L. Ed. 2d 551 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961); [McGowan v. State of Md.](#), 366 U.S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961).
- 4 [Home Depot, Inc. v. Guste](#), 773 F.2d 616 (5th Cir. 1985).
- 5 §§ 39 et seq.
- 6 [Rich v. Com.](#), 198 Va. 445, 94 S.E.2d 549 (1956).

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73 Am. Jur. 2d Sundays and Holidays § 12

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Sundays and Holidays

Jack K. Levin, J.D.

II. Restrictions on Activities on Sundays and Holidays

B. Validity

1. In General

§ 12. Religious grounds—Persons observing other day as Sabbath

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Sunday](#)  2

A.L.R. Library

[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

Although it has been contended that Sunday laws impose on Jews the observance of two Sabbaths, it is said that it is their religion and not the effect of the law that requires them to observe Saturday also,¹ and the enactment of such statutes does not in interfere with the free exercise of their religion.²

A Sunday statute that provides an exception to the general prohibition against work, labor, or business on Sunday with respect to persons observing another day as the Sabbath³ neither discriminates against persons who do observe Sunday as the Sabbath nor impart such a religious flavor to the entire statute as to bring it within the constitutional prohibition against any law for the establishment of religion.⁴ The absence of such an exception does not render the statute unconstitutional.⁵

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Footnotes

- 1 Gallagher v. Crown Kasher Super Market of Mass., Inc., 366 U.S. 617, 81 S. Ct. 1122, 6 L. Ed. 2d 536 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961); Braunfeld v. Brown, 366 U.S. 599, 81 S. Ct. 1144, 6 L. Ed. 2d 563 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961).
- 2 Gallagher v. Crown Kasher Super Market of Mass., Inc., 366 U.S. 617, 81 S. Ct. 1122, 6 L. Ed. 2d 536 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961); Braunfeld v. Brown, 366 U.S. 599, 81 S. Ct. 1144, 6 L. Ed. 2d 563 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961); Xepapas v. Richardson, 149 S.C. 52, 146 S.E. 686 (1929).
- 3 § 38.
- 4 Com. v. Arlan's Dept. Store of Louisville, 357 S.W.2d 708 (Ky. 1962); State v. Grabinski, 33 Wash. 2d 603, 206 P.2d 1022 (1949).
As to whether Sunday closing laws deprive persons observing a different day as their Sabbath of equal protection, see § 15.
- 5 Braunfeld v. Brown, 366 U.S. 599, 81 S. Ct. 1144, 6 L. Ed. 2d 563 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961); Opinion of the Justices, 108 N.H. 103, 229 A.2d 188 (1967).

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73 Am. Jur. 2d Sundays and Holidays § 13

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Sundays and Holidays

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II. Restrictions on Activities on Sundays and Holidays

B. Validity

1. In General

§ 13. Religious grounds—Recognition of religious holidays

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Holidays](#)  1

A.L.R. Library

[Validity, under federal and state establishment of religion provisions, of prohibition of sale of intoxicating liquors on specific religious holidays, 27 A.L.R.4th 1155](#)

[Validity, under establishment of religion clause of federal or state constitution, of provision making day of religious observance a legal holiday, 90 A.L.R.3d 752](#)

State recognition of a religious holiday as a legal holiday generally does not violate state or federal constitutional prohibitions regarding the establishment of religion, usually in cases involving Good Friday,¹ where there exists a secular justification for recognizing the holiday.² There is, however, authority to the contrary.³

A legislature's failure to designate the Jewish religious day of Yom Kippur as a legal holiday does not deny adherents of the Jewish faith equal protection or effect discrimination because of religious principles.⁴

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Footnotes

- 1 [Bridenbaugh v. O'Bannon](#), 185 F.3d 796 (7th Cir. 1999); [Cammack v. Waihee](#), 932 F.2d 765 (9th Cir. 1991) (rejected on other grounds by, [Colorado Taxpayers Union, Inc. v. Romer](#), 963 F.2d 1394 (10th Cir. 1992)); [Granzeier v. Middleton](#), 955 F. Supp. 741 (E.D. Ky. 1997), *aff'd*, 173 F.3d 568, 1999 FED App. 0143P (6th Cir. 1999) (local practice of closing courthouse on Good Friday); [Koenick v. Felton](#), 973 F. Supp. 522, 121 Ed. Law Rep. 80 (D. Md. 1997), judgment *aff'd*, 190 F.3d 259, 138 Ed. Law Rep. 100 (4th Cir. 1999) (also Monday after Easter as a school holiday); [California Sch. Employees Assn. v. Sequoia Union High Sch. Dist.](#), 67 Cal. App. 3d 157, 136 Cal. Rptr. 594 (1st Dist. 1977) (upholding statute authorizing collective bargaining to determine state holiday that resulted in paid leave on Good Friday); [Americans United for Separation of Church and State v. Kent County](#), 97 Mich. App. 72, 293 N.W.2d 723 (1980) (same).
- 2 [Bridenbaugh v. O'Bannon](#), 185 F.3d 796 (7th Cir. 1999) (several secular justifications, including providing a spring holiday, did not constitute a "sham," and the recognition of the holiday neither had the principal effect of advancing religion nor represented an endorsement of religion); [Cammack v. Waihee](#), 932 F.2d 765 (9th Cir. 1991) (rejected on other grounds by, [Colorado Taxpayers Union, Inc. v. Romer](#), 963 F.2d 1394 (10th Cir. 1992)) (holding that the primary purpose of the law was secular, that is, to have more legal holidays, the holiday could not be regarded as an endorsement of religion any more than Sunday closing laws could, and, to the extent that the actual date of the holiday would be determined by resort to church calendars, any such entanglement was not the kind of "comprehensive" and "enduring" entanglement that the First Amendment prohibits); [Koenick v. Felton](#), 973 F. Supp. 522, 121 Ed. Law Rep. 80 (D. Md. 1997), judgment *aff'd*, 190 F.3d 259, 138 Ed. Law Rep. 100 (4th Cir. 1999).
- 3 [Freedom From Religion Foundation, Inc. v. Thompson](#), 920 F. Supp. 969 (W.D. Wis. 1996) (invalidating a state statute closing government offices and schools on Good Friday); [Mandel v. Hodges](#), 54 Cal. App. 3d 596, 127 Cal. Rptr. 244, 90 A.L.R.3d 728 (1st Dist. 1976) (holding that a statute providing that Good Friday from 12 noon until 3 p.m. is a state holiday is unconstitutional under the establishment clause of the California and U.S. Constitutions and the free exercise clause of the California Constitution).
- 4 [Epstein v. State](#), 311 N.J. Super. 350, 709 A.2d 1353 (App. Div. 1998).

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73 Am. Jur. 2d Sundays and Holidays § 14

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Sundays and Holidays

Jack K. Levin, J.D.

II. Restrictions on Activities on Sundays and Holidays

B. Validity

1. In General

§ 14. Actions to determine validity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Sunday](#)  2

A.L.R. Library

[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status](#), 10 A.L.R.4th 246

Forms

[Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 10](#) (Complaint, petition, or declaration—To restrain city from enforcing ordinance making operation of business on Sunday a misdemeanor—Ordinance conflicts with state law)

[Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 11](#) (Complaint, petition, or declaration—For temporary restraining order pending appeal—To restrain chief of police from arresting plaintiff for doing business on Sunday)

The validity of Sunday closing statutes may be attacked in actions for declaratory judgment¹ even though the courts have refused to entertain such actions in the absence of a justiciable controversy.²

Actions to enjoin the enforcement of Sunday closing ordinances and to determine their constitutionality and validity may also be maintained³ although, under the general rule that the constitutionality of a statute may not be challenged in an action to enjoin its enforcement, the courts in some cases have deemed it appropriate to pass on the validity of statutes prohibiting certain business activities on Sunday in actions for injunctions.⁴ An injunction has been held appropriate as a means of obtaining a decision whether a Sunday law is being enforced in an unconstitutionally discriminatory manner.⁵ To justify a federal court's interference by way of injunction with the operation of a state criminal statute, such as a Lord's day statute, there must be exceptional circumstances present and a clear showing that an injunction is necessary to provide adequate protection of constitutional rights, as when the enforcement of such a statute would result in the denial of the civil rights of a citizen, and state officials intend to enforce the statute unless and until its unconstitutionality has been finally adjudicated.⁶

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Footnotes

- 1 [Motor Vehicle Bd. of Texas Dept. of Transp. v. El Paso Independent Auto. Dealers Ass'n, Inc.](#), 37 S.W.3d 538 (Tex. App. El Paso 2001) (holding that the motor vehicle board, as the party responsible for enforcement of the blue law prohibiting the sale of motor vehicles on consecutive Saturdays and Sundays, was a necessary party to an action seeking a declaration regarding the constitutionality of the blue law); [Mandell v. Haddon](#), 202 Va. 979, 121 S.E.2d 516 (1961).
- 2 [State v. Margolis](#), 439 S.W.2d 695 (Tex. Civ. App. Austin 1969), writ refused n.r.e., (July 23, 1969).
- 3 [Humphrey Chevrolet, Inc. v. City of Evanston](#), 7 Ill. 2d 402, 131 N.E.2d 70, 57 A.L.R.2d 969 (1955); [Town of Foxborough v. Bay State Harness Horse Racing & Breeding Ass'n, Inc.](#), 5 Mass. App. Ct. 613, 366 N.E.2d 773 (1977); [Skag-Way Dept. Stores, Inc. v. City of Grand Island](#), 176 Neb. 169, 125 N.W.2d 529 (1964).
- 4 [Treasure City of Fayetteville, Inc. v. Clark](#), 261 N.C. 130, 134 S.E.2d 97 (1964).
- 5 [Moss v. Hornig](#), 314 F.2d 89 (2d Cir. 1963).
- 6 [Crown Kosher Super Market of Mass., Inc. v. Gallagher](#), 176 F. Supp. 466 (D. Mass. 1959), judgment rev'd on other grounds, 366 U.S. 617, 81 S. Ct. 1122, 6 L. Ed. 2d 536 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961).
As to restrictions on enjoining enforcement of criminal law, generally, see [Am. Jur. 2d, Injunctions §§ 161 et seq.](#)

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73 Am. Jur. 2d Sundays and Holidays § 15

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B. Validity

2. Equal Protection

§ 15. Generally

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West's Key Number Digest

West's Key Number Digest, [Sunday](#)  2

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[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

In enacting statutes or ordinances requiring observance of Sunday, a legislative body is vested with discretion in determining the kinds of activities, occupations, or businesses to be included or excluded; a court will not interfere with its determination provided that the classification is founded on reasonable distinctions and has some reasonable relation to the public peace, welfare, and safety.¹ The courts will not sustain a statute or ordinance that prohibits the exercise of certain businesses or occupations, legitimate and lawful in themselves, while a similar prohibition is not placed on other similar occupations where there is not any inherent reason for special discrimination.² However, the fact that there are classes similarly situated, other than those affected, which the legislature might with equal propriety have included in a Sunday law is not a valid objection to that law.³

A rational basis test applies to the classifications in Sunday closing laws,⁴ and those laws have strong presumption of validity when challenged on equal protection grounds.⁵ Although the Equal Protection Clause does not require that a legislature achieve an abstract symmetry or classify with mathematical nicety,⁶ the one requirement is that the statute or ordinance must affect all persons similarly situated or engaged in the same business without discrimination.⁷ However, it does not follow that laws

are valid simply because they operate equally on all within a certain class or classes; it is necessary that there be a valid and substantial reason to make such laws operate only on certain classes rather than generally upon all.⁸ Thus, for example, a Sunday closing law which authorized 37 kinds of businesses to operate on Sunday so long as they did not sell 44 kinds of prohibited items did not violate the Equal Protection Clause on the ground that some stores were required to remain closed even though their inventory included items that were not prohibited from being sold, while other stores were allowed to open and sell those same kinds of items.⁹

Discrimination in Sunday statutes or ordinances between individuals and corporations does not violate equal protection,¹⁰ but a classification based on residency is void.¹¹

A Sunday closing law does not deprive retail merchants who observe a day other than Sunday as their Sabbath of equal protection.¹²

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Footnotes

- 1 [McGowan v. State of Md.](#), 366 U.S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961); [Petit v. State of Minn.](#), 177 U.S. 164, 20 S. Ct. 666, 44 L. Ed. 716 (1900); [Berta v. State](#), 223 Ga. 267, 154 S.E.2d 594 (1967); [Raleigh Mobile Home Sales, Inc. v. Tomlinson](#), 276 N.C. 661, 174 S.E.2d 542 (1970); [City of Bismarck v. Materi](#), 177 N.W.2d 530 (N.D. 1970). As to the constitutional guarantee of equal protection, generally, see [Am. Jur. 2d, Constitutional Law §§ 823 et seq.](#)
- 2 [Henderson v. Antonacci](#), 62 So. 2d 5 (Fla. 1952) (holding that a Sunday blue law prohibiting the operation of used car lots, but permitting the operation of gasoline stations and garages, is unconstitutional).
- 3 [People's Appliance & Furniture, Inc. v. City of Flint](#), 358 Mich. 34, 99 N.W.2d 522 (1959); [Gundaker Central Motors, Inc. v. Gassert](#), 23 N.J. 71, 127 A.2d 566 (1956).
- 4 [Kittery Motorcycle, Inc. v. Rowe](#), 320 F.3d 42 (1st Cir. 2003); [Hartley Hill Hunt Club v. County Com'n of Ritchie County](#), 220 W. Va. 382, 647 S.E.2d 818 (2007) (under state constitution's equal protection clause).
- 5 [Kittery Motorcycle, Inc. v. Rowe](#), 320 F.3d 42 (1st Cir. 2003).
- 6 [People v. Friedman](#), 302 N.Y. 75, 96 N.E.2d 184 (1950).
- 7 [Pacesetter Homes, Inc. v. Village of South Holland](#), 18 Ill. 2d 247, 163 N.E.2d 464 (1959); [State v. Karmil Merchandising Corp.](#), 158 Me. 450, 186 A.2d 352 (1962); [People's Appliance & Furniture, Inc. v. City of Flint](#), 358 Mich. 34, 99 N.W.2d 522 (1959); [City of Bismarck v. Materi](#), 177 N.W.2d 530 (N.D. 1970).
- 8 [Henderson v. Antonacci](#), 62 So. 2d 5 (Fla. 1952).
- 9 [Best Products Co., Inc. v. Spaeth](#), 461 N.W.2d 91 (N.D. 1990).
- 10 [Rothe v. S-N-Go Stores, Inc.](#), 308 N.W.2d 872 (N.D. 1981) (holding that a statutory requirement that the manager of a small grocery store must have an ownership interest in the business for the store to remain open on Sunday does not violate the Equal Protection Clause since that requirement is a rational method by which to discourage the proliferation of grocery stores remaining open on Sundays and, thus, is rationally related to the legitimate objective of providing a day of relaxation); [State v. Solomon](#), 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277 (1965).
- 11 [Spokane County v. Valu-Mart, Inc.](#), 69 Wash. 2d 712, 419 P.2d 993 (1966).
- 12 [State v. Fass](#), 36 N.J. 102, 175 A.2d 193 (1961).
As to whether Sunday closing laws deprive persons who observe a different day as their Sabbath of their First Amendment right of freedom of religion, see § 12.

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2. Equal Protection

§ 16. Works of necessity, emergency, or charity

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The exception of works of necessity, emergency, or charity¹ is not generally considered to be discriminatory or violative of the Equal Protection Clause of the U.S. or a state constitution.² However, the exemption of certain businesses and occupations on the theory that they are works of necessity is unconstitutional unless an implied exception of all works of necessity can be read into the law.³ The exemption of businesses or activities that are not works of necessity or charity does not necessarily violate equal protection.⁴

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Footnotes

- ¹ §§ 39 et seq.
- ² *Opinion of the Justices*, 108 N.H. 103, 229 A.2d 188 (1967).
- ³ *Gronlund v. Salt Lake City*, 113 Utah 284, 194 P.2d 464 (1948).

4 [Berta v. State, 223 Ga. 267, 154 S.E.2d 594 \(1967\).](#)

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2. Equal Protection

§ 17. Classification of businesses and stores

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West's Key Number Digest

West's Key Number Digest, [Sunday](#)  2, 5

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The decisive question in each case when a law specifies the businesses that may not operate on Sunday is not how the legislature classifies particular businesses or activities but whether the classification bears some reasonable relation to the achievement of the State's objective in the enactment of Sunday statutes, namely, the promotion of the public health, safety, morals, or welfare.¹ Thus, in the absence of a rational connection between items deemed appropriate to sell on a day of rest and recreation and the business establishments permitted to offer those items for sale under a Sunday closing law, such a classification is too arbitrary, discriminatory, and unreasonable to comport with the requirements of equal protection.² State Sunday closing laws that make exemptions for certain businesses on an arbitrary basis and permit exemptions in such number as to undermine the rationale of the law as a whole are unconstitutional.³

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Footnotes

- 1 McGowan v. State of Md., 366 U.S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961); City of Mt. Vernon v. Julian, 369 Ill. 447, 17 N.E.2d 52, 119 A.L.R. 747 (1938); Gundaker Central Motors, Inc. v. Gassert, 23 N.J. 71, 127 A.2d 566 (1956).
- 2 Caldor's, Inc. v. Bedding Barn, Inc., 177 Conn. 304, 417 A.2d 343, 10 A.L.R.4th 230 (1979).
- 3 Caldor's, Inc. v. Bedding Barn, Inc., 177 Conn. 304, 417 A.2d 343, 10 A.L.R.4th 230 (1979); People v. Abrahams, 40 N.Y.2d 277, 386 N.Y.S.2d 661, 353 N.E.2d 574 (1976); Kroger Co. v. O'Hara Tp., 481 Pa. 101, 392 A.2d 266 (1978).

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§ 18. Classification of commodities

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[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

The fact Sunday closing laws provide exceptions allowing the sale of certain types of products does not render the law constitutionally invalid under the rational relationship test even if the existence of exceptions detracts from the goal of providing a uniform day of rest.¹ However, prohibitions against public sales on Sunday, subject to so many exceptions that any rational nexus between the statute and its purpose was eliminated, are unconstitutional.²

With respect to statutes or ordinances that contain a general prohibition against the sale of commodities on Sunday, but provide that certain enumerated commodities are exempt from the prohibition, certain classifications have been held valid³ while others have not.⁴ Similarly, the classifications in a Sunday closing law, which authorized the sale of everything on Sundays except motor vehicles, were not so spurious as to render the statute palpably arbitrary; thus, the law, as applied to motor vehicle dealerships, did not violate the Equal Protection Clause.⁵

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Footnotes

- 1 [Home Depot, Inc. v. Guste](#), 773 F.2d 616 (5th Cir. 1985).
- 2 [People v. Abrahams](#), 40 N.Y.2d 277, 386 N.Y.S.2d 661, 353 N.E.2d 574 (1976) (charge that a drug store owner sold a ceramic bank, a product not specifically exempted from the general Sunday closing law; noting various exceptions engrafted in the law, such as from selling thoroughbreds to soda water).
- 3 [McGowan v. State of Md.](#), 366 U.S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961); [Bill Dyer Supply Co., Inc. v. State](#), 255 Ark. 613, 502 S.W.2d 496 (1973); [Fireside Chrysler-Plymouth, Mazda, Inc. v. Edgar](#), 102 Ill. 2d 1, 79 Ill. Dec. 677, 464 N.E.2d 275 (1984); [Vornado, Inc. v. Hyland](#), 77 N.J. 347, 390 A.2d 606 (1978); [Gibson Products Co., Inc. v. State](#), 545 S.W.2d 128 (Tex. 1976).
- 4 [State v. Anonymous](#) (1976-12), 33 Conn. Supp. 141, 366 A.2d 200 (C.P. 1976); [Gronlund v. Salt Lake City](#), 113 Utah 284, 194 P.2d 464 (1948).
- 5 [Kittery Motorcycle, Inc. v. Rowe](#), 320 F.3d 42 (1st Cir. 2003) (Maine statute that defined motor vehicles to include motorcycles but not motor homes; also holding that the decision to classify motorcycles as motor vehicles in its Sunday closing laws, rather than as recreational vehicles, which were not subject to the Sunday laws, was not arbitrary and irrational).

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§ 19. Classification of sports and amusements

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West's Key Number Digest, [Sunday](#)  6(1)

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[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

Regulations prohibiting certain sports and amusements on Sunday but permitting others are generally not unreasonably discriminatory.¹ The legislature may recognize different degrees of evil tendency in different forms of amusement or entertainment, and may give effect to that determination in Sunday laws, without being open to the charge that the legislation is arbitrary and unwarranted.² However, while this type of classification has been found to be valid,³ the contrary view has also been taken.⁴

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Footnotes

¹ [Bothwell v. City of York, 291 Pa. 363, 140 A. 130 \(1927\).](#)

² [Lane v. McFadyen, 259 Ala. 205, 66 So. 2d 83 \(1953\); West Coast Theatres v. City of Pomona, 68 Cal. App. 763, 230 P. 225 \(2d Dist. 1924\); State v. Loomis, 75 Mont. 88, 242 P. 344 \(1925\).](#)

- 3 [Division of Pari-Mutuel Wagering Dept. of Business Regulation v. Florida Horse Council, Inc.](#), 464 So. 2d 128 (Fla. 1985) (upholding Sunday racing and betting restrictions); [Wilder v. State](#), 232 Ga. 404, 207 S.E.2d 38 (1974) (holding that a classification requiring that billiard rooms be closed on Sunday is reasonable and does not deny equal protection merely because other statutes allow other Sunday amusements).
- 4 [State v. Greenwood](#), 280 N.C. 651, 187 S.E.2d 8 (1972) (invalidating a prohibition of the operation of a billiard hall "at any time on Sunday" since the operation of billiard halls on Sunday does not constitute interference with the peace and quiet of that day in a manner or to an extent substantially different from the operation of other sport or recreation facilities).

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§ 20. Classification based on localities

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The Equal Protection Clause of the United States Constitution relates to equality between persons, rather than between areas, and territorial uniformity is not a constitutional prerequisite.¹ Accordingly, unless there are special state constitutional restrictions,² a legislature may determine the territorial limits within which certain businesses or activities may be conducted or prohibited on Sunday³ provided that it treats alike all businesses or activities of the same class within the same locality.⁴ Thus, a zoning ordinance may validly prohibit the operation of particular businesses in a residential use district on Sunday.⁵ Similarly, a classification contained in a Sunday closing ordinance did not unlawfully discriminate against members of the same class by allowing residents to perform personal and office tasks in their homes on Sunday even though performance of the same tasks in office buildings was prohibited.⁶ A statute allowing each county in the state to hold a local option election to determine whether to prohibit Sunday hunting on privately owned land did not violate the state constitution's equal protection clause where the statute bore a reasonable relationship to the government purpose of managing the state's wildlife resources; the county-based classes recognized the different social, economic, historic, and geographic needs of each county; and all citizens of entire state were treated equally.⁷ However, Sunday closing law provisions allowing for selective and discriminatory enforcement, creating

myriad exceptions without reason, and being more restrictive in application to cities over a specified population failed to provide all inhabitants equal protection and were unconstitutional.⁸

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Footnotes

- 1 Am. Jur. 2d, Constitutional Law § 908.
- 2 Galloway v. Wolfe, 117 Neb. 824, 223 N.W. 1, 62 A.L.R. 637 (1929).
- 3 McGowan v. State of Md., 366 U.S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961); State v. Loomis, 75 Mont. 88, 242 P. 344 (1925).
- 4 People v. Havnor, 149 N.Y. 195, 43 N.E. 541 (1896); Treasure City of Fayetteville, Inc. v. Clark, 261 N.C. 130, 134 S.E.2d 97 (1964).
- 5 City of Akron v. Klein, 171 Ohio St. 207, 12 Ohio Op. 2d 331, 168 N.E.2d 564 (1960).
- 6 Mack Paramus Co. v. Mayor and Council of Borough of Paramus, 228 N.J. Super. 234, 549 A.2d 474 (Law Div. 1988).
- 7 Hartley Hill Hunt Club v. County Com'n of Ritchie County, 220 W. Va. 382, 647 S.E.2d 818 (2007).
- 8 Twin Fair Distributors Corp. v. Cosgrove, 85 Misc. 2d 901, 380 N.Y.S.2d 933 (Sup 1976).

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2. Equal Protection

§ 21. Imposition of different penalties

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A legislature may indicate, by the amount of the prescribed punishment, that some of the acts prohibited on Sunday are more obnoxious than others.¹ The legislature may also, in its discretion, impose such a reasonable penalty, applicable to all the members of any given class of persons for working or doing some particular act on Sunday, as it may deem necessary to make the law effective, and although the statute imposes a heavier penalty for one activity than for others, it does not violate the Equal Protection Clause so long as the classification is reasonable.² However, a penalty provided for violation of a Sunday closing law, which allowed for forfeiture of all commodities illegally exposed for sale on Sunday and delivery of the proceeds to an overseer of the poor, was obviously archaic, constituted inordinate and harsh punishment, and was unconstitutional.³

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Footnotes

- ¹ [Two Guys From Harrison-Allentown, Inc. v. McGinley](#), 366 U.S. 582, 81 S. Ct. 1135, 6 L. Ed. 2d 551 (1961), for additional opinion, see, [366 U.S. 420](#), 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961).

- 2 [State v. Murray](#), 104 Neb. 51, 175 N.W. 666, 8 A.L.R. 563 (1919); [Ex parte Wright](#), 56 Tex. Crim. 504, 120 S.W. 868 (1909).
As to the validity of ordinances imposing greater penalties than those specified by a general Sunday statute, see [§ 7](#).
- 3 [Twin Fair Distributors Corp. v. Cosgrove](#), 85 Misc. 2d 901, 380 N.Y.S.2d 933 (Sup 1976).

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2. Equal Protection

§ 22. Lack of uniformity of enforcement

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Selective enforcement designed to discriminate against the persons prosecuted, without any intention to follow it by general enforcement against others, may violate the U.S. Constitution.¹ However, the mere fact that public officials intentionally fail to enforce a Sunday closing ordinance against certain violators does not deprive other violators against whom the ordinance is enforced of equal protection because to establish arbitrary discrimination, there must be more than a showing that a law or ordinance has not been enforced against others as it is sought to be enforced against the person claiming discrimination.² In determining whether there has been a discriminatory enforcement of a Sunday closing law amounting to a denial of equal protection, the test is whether it is applied and administered by public authority with an "evil eye" and an "unequal hand" so as to make unjust and illegal discrimination between persons in similar circumstances in a practical sense.³

Thus, while a lack of uniform enforcement of Sunday closing laws has been found not to affect the laws' constitutionality,⁴ there is authority to the contrary.⁵

Footnotes

- 1 [People v. Utica Daw's Drug Co.](#), 16 A.D.2d 12, 225 N.Y.S.2d 128, 4 A.L.R.3d 393 (4th Dep't 1962).
- 2 [Arrigo v. City of Lincoln](#), 154 Neb. 537, 48 N.W.2d 643 (1951).
- 3 [Broad-Grace Arcade Corp. v. Bright](#), 48 F.2d 348 (E.D. Va. 1931), *aff'd*, 284 U.S. 588, 52 S. Ct. 137, 76 L. Ed. 507 (1931); [People v. Paine Drug Co.](#), 22 A.D.2d 156, 254 N.Y.S.2d 492 (4th Dep't 1964), *order aff'd*, 16 N.Y.2d 503, 260 N.Y.S.2d 444, 208 N.E.2d 176 (1965).
- 4 [Opyt's Amoco, Inc. v. Village of South Holland](#), 209 Ill. App. 3d 473, 154 Ill. Dec. 260, 568 N.E.2d 260 (1st Dist. 1991), *judgment aff'd*, 149 Ill. 2d 265, 172 Ill. Dec. 390, 595 N.E.2d 1060 (1992) (holding that failure to enforce a Sunday closing ordinance against one business did not violate equal protection); [Zayre Corp. v. Attorney General](#), 372 Mass. 423, 362 N.E.2d 878 (1977) (holding that evidence that law enforcement officials had not been uniform in enforcing the law was not sufficient proof to demonstrate the impossibility of enforcement of a common-day-of-rest law); [Vornado, Inc. v. Hyland](#), 77 N.J. 347, 390 A.2d 606 (1978) (holding that the Sunday closing law was valid despite a claim that it was incapable of uniform enforcement); [Mack Paramus Co. v. Mayor and Council of Borough of Paramus](#), 228 N.J. Super. 234, 549 A.2d 474 (Law Div. 1988) (holding that weak, lax, or inconsistent law enforcement could not serve as a basis to render a Sunday closing ordinance invalid); [People v. Wegman's Food Markets, Inc.](#), 80 Misc. 2d 89, 362 N.Y.S.2d 902 (Town Ct. 1974) (holding that the heavy burden of proof necessary to show conscious, intentional discrimination in the enforcement of the Sunday law in violation of equal protection was not met); [Goodman v. Kennedy](#), 459 Pa. 313, 329 A.2d 224 (1974) (holding that a lack of uniformity in the enforcement of the Sunday closing law was not discriminatory where the lack of uniformity was not the result of purposeful discrimination aimed at a particular class).
- 5 [State v. Anonymous \(1976-7\)](#), 33 Conn. Supp. 55, 364 A.2d 244 (C.P. 1976) (holding that where arrests were not made by police officers because of on-sight violations of Sunday blue laws or because of complaints from persons unrelated to the arrested person's line of business but solely from specific complaints made by competitors, and the blue laws were not being enforced by the State against private concerns that leased state facilities, there was discriminatory and selective enforcement violating equal protection); [Twin Fair Distributors Corp. v. Cosgrove](#), 85 Misc. 2d 901, 380 N.Y.S.2d 933 (Sup 1976) (holding that Sunday closing law provisions, by allowing for selective and discriminatory enforcement, failed to provide all inhabitants equal protection and were unconstitutional).

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73 Am. Jur. 2d Sundays and Holidays § 23

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3. Due Process

§ 23. Vagueness

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The validity of Sunday observance laws has been assailed for violation of the Due Process Clause because of alleged vagueness and uncertainty in the language used.¹ Sunday legislation must, to avoid its invalidation on the ground of vagueness or uncertainty, constitute a reasonable guide for conduct, permitting an individual of ordinary intelligence to determine in advance what acts are prohibited and what are permitted.² Generally, the categorization of goods that may or may not be sold under Sunday closing laws has not been found unconstitutionally vague.³

Stated conversely, a Sunday closing law, which is so vague that men and women of common intelligence must necessarily guess at its meaning, violates due process.⁴ Thus, for example, a Sunday closing law prohibiting the operation on Sunday of grocery stores with more than four employees was vague, unworkable, and unenforceable because it was unclear whether the phrase "four employees" included the owner and members of his family, janitor, bag boys, and security guards.⁵ On the other hand, the fact that the legislature could have chosen more precise language and less convoluted syntax to achieve the desired intent in a Sunday closing law will not render a provision void where it may be made constitutionally definite by a reasonable construction.⁶

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Footnotes

- 1 State v. Hill, 189 Kan. 403, 369 P.2d 365, 91 A.L.R.2d 750 (1962); Giant of Maryland, Inc. v. State's Attorney for Prince George's County, 267 Md. 501, 298 A.2d 427 (1973); Skaggs Drug Centers, Inc. v. Ashley, 26 Utah 2d 38, 484 P.2d 723 (1971).
- 2 Handy Dan Imp. Center, Inc. v. Adams, 276 Ark. 268, 633 S.W.2d 699 (1982); State v. Hill, 189 Kan. 403, 369 P.2d 365, 91 A.L.R.2d 750 (1962); State v. S. S. Kresge, Inc., 364 A.2d 868 (Me. 1976); McGowan v. State, 220 Md. 117, 151 A.2d 156 (1959), judgment aff'd, 366 U.S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961); Michelle Corp. v. El Paso Retailers Ass'n, Inc., 675 S.W.2d 610 (Tex. App. El Paso 1984).
 A village ordinance containing Sunday blue laws was not vague in the constitutional sense with respect to the sale of take-out food by businesses other than restaurants, such as gasoline stations and truck stops; it was clear that the sale of such food other than by restaurants was prohibited because the ordinance permitted the sale of food from premises only if their sole purpose was the daily preparation of food and drink for retail sale to the public. Opyt's Amoco, Inc. v. Village of South Holland, 209 Ill. App. 3d 473, 154 Ill. Dec. 260, 568 N.E.2d 260 (1st Dist. 1991), judgment aff'd, 149 Ill. 2d 265, 172 Ill. Dec. 390, 595 N.E.2d 1060 (1992).
 A Sunday closing law, which provided that any person who carries on or engages in the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles on the first day of the week, commonly known and designated as Sunday, is a disorderly person was not void for vagueness for purposes of the Due Process Clause. Kittery Motorcycle, Inc. v. Rowe, 320 F.3d 42 (1st Cir. 2003) (Maine statute).
- 3 Vornado, Inc. v. Hyland, 77 N.J. 347, 390 A.2d 606 (1978).
- 4 Handy Dan Imp. Center, Inc. v. Adams, 276 Ark. 268, 633 S.W.2d 699 (1982).
- 5 Simonetti v. City of Birmingham, 55 Ala. App. 163, 314 So. 2d 83 (Crim. App. 1975).
- 6 Com. v. Great Atlantic & Pacific Tea Co., Inc., 404 Mass. 476, 536 N.E.2d 318 (1989).

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73 Am. Jur. 2d Sundays and Holidays § 24

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B. Validity

3. Due Process

§ 24. Deprivation of property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Sunday](#)  2

A.L.R. Library

[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

A statute singling out a particular business and prohibiting its exercise on Sunday may be invalid as depriving the owner of one's property, and the employee working in such a business of the fruits of his or her labor, without due process.¹ However, a due process violation does not occur if there is any reasonable basis for statutes that single out a particular business and prohibit its operation on Sunday.²

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Footnotes

¹ [Eden v. People](#), 161 Ill. 296, 43 N.E. 1108 (1896).

² [ABC Liquidators, Inc. v. Kansas City](#), 322 S.W.2d 876 (Mo. 1959); [Gundaker Central Motors, Inc. v. Gassert](#), 23 N.J. 71, 127 A.2d 566 (1956).

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West's Key Number Digest

West's Key Number Digest, [Sunday](#)  4, 5, 6(1), 6(2)

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73 Am. Jur. 2d Sundays and Holidays § 25

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C. Acts and Transactions Permitted or Prohibited

1. Labor or Business

§ 25. Generally

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West's Key Number Digest

West's Key Number Digest, [Sunday](#)  4

A.L.R. Library

[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

Construction of the word "labor," as used in Sunday statutes, depends on the intent of the legislature, considering both the object to be accomplished and the particular language employed in the statute.¹ Although the term "labor" as used in Sunday laws may be given a broad meaning,² it is generally construed in its ordinary sense,³ and, as thus construed, it may not include acts involving the exercise of the mental faculties, such as those performed by professional persons.⁴

Among the acts that have been recognized to be work, labor, employment, or the exercise of a vocation, trade, or calling, within Sunday laws, are various agricultural activities⁵ and diverse business or commercial activities, such as—

—barbering.⁶

—commercial car washing.⁷

—flying exhibitions.⁸

— sale of non-drug items in a drugstore.⁹

— operation of a photographer's studio.¹⁰

— appointing an agent to sell real estate.¹¹

The act of calling on homes on Sunday for the purpose of propagandizing a religion does not violate a statute prohibiting labor on Sunday.¹² A subscription made on Sunday to a church has been sustained as not constituting "common labor."¹³

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Footnotes

- 1 [City of Topeka v. Crawford](#), 78 Kan. 583, 96 P. 862 (1908).
- 2 [Ex parte Axsom](#), 63 Tex. Crim. 627, 141 S.W. 793 (1911).
- 3 [Territory v. Davenport](#), 17 N.M. 214, 124 P. 795 (1912); [Crook v. Commonwealth](#), 147 Va. 593, 136 S.E. 565, 50 A.L.R. 1043 (1927).
- 4 [Jones v. Brantley](#), 121 Miss. 721, 83 So. 802, 8 A.L.R. 1353 (1920) (holding that, generally, attorneys come within the provisions of Sunday statutes prohibiting labor at one's own trade or calling, although there may be some services that an attorney may lawfully perform on Sunday, depending on the statutes); [People v. Sacks](#), 2 Misc. 2d 201, 150 N.Y.S.2d 222 (Magis. Ct. 1956).
- 5 [Commonwealth v. White](#), 190 Mass. 578, 77 N.E. 636 (1906).
As to agricultural operations as works of necessity, see § 42.
- 6 [Gray v. Com.](#), 171 Ky. 269, 188 S.W. 354 (1916).
- 7 [People v. Gordon](#), 1 A.D.2d 1044, 152 N.Y.S.2d 614 (2d Dep't 1956).
- 8 [Ewing v. Halsey](#), 127 Kan. 86, 272 P. 187 (1928).
- 9 [Penniston v. City of Newnan](#), 117 Ga. 700, 45 S.E. 65 (1903).
- 10 [State v. Dean](#), 149 Minn. 410, 184 N.W. 275 (1921).
- 11 [Kryzminski v. Callahan](#), 213 Mass. 207, 100 N.E. 335 (1913).
As to sales as work, labor, employment, trade, or calling, see § 29.
- 12 [State v. Mead](#), 230 Iowa 1217, 300 N.W. 523 (1941).
- 13 [Bryan v. Watson](#), 127 Ind. 42, 26 N.E. 666 (1891).

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73 Am. Jur. 2d Sundays and Holidays § 26

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C. Acts and Transactions Permitted or Prohibited

1. Labor or Business

§ 26. Keeping shop open

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West's Key Number Digest

West's Key Number Digest, [Sunday](#)  4, 5

A.L.R. Library

[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

A statute prohibiting keeping a shop or place of business open on Sunday prohibits only keeping it open for the purpose of inviting trade, or inviting or permitting people to enter and transact business or work in it, and does not prohibit one from entering his or her shop for other purposes,¹ nor does it prohibit the mere opening of the door of a shop or place of business or keeping the door open.² Thus, a statute that prohibits the selling or offering for sale of specified merchandise on Sunday does not prohibit store employees from going inside the store on Sunday to perform jobs other than selling.³ To constitute a violation of such a statute, the establishment must be kept accessible to those wishing to enter it for purposes of trade or employment⁴ or for the purpose of doing some work there⁵ or displaying goods stored there for sale.⁶

An ordinance permitting grocery stores to be open on Sundays between the hours of 1 p.m. and 6 p.m. only is not subject to a charge of facial invalidity.⁷

Footnotes

- 1 [State v. Morin, 108 Me. 303, 80 A. 751 \(1911\).](#)
- 2 [Jebeles v. State, 131 Ala. 41, 31 So. 377 \(1902\).](#)
- 3 [§ 28.](#)
- 4 [State v. Patrignani, 65 N.J. Super. 303, 167 A.2d 671 \(County Ct. 1961\).](#)
- 5 [Commonwealth v. Kirshen, 194 Mass. 151, 80 N.E. 2 \(1907\).](#)
- 6 [Jebeles v. State, 131 Ala. 41, 31 So. 377 \(1902\).](#)
- 7 [State v. Underwood, 283 N.C. 154, 195 S.E.2d 489 \(1973\).](#)

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73 Am. Jur. 2d Sundays and Holidays § 27

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C. Acts and Transactions Permitted or Prohibited

1. Labor or Business

§ 27. Particular businesses proscribed

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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West's Key Number Digest, [Sunday](#)  5

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[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

Coin-operated laundries have¹ and have not² been found to be within Sunday closing law prohibitions.

Unless exempted by statute,³ printing or distributing newspapers is within a statute prohibiting worldly employment or business on Sunday.⁴

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Footnotes

- ¹ [Com. v. Chamberlain, 343 Mass. 49, 175 N.E.2d 486 \(1961\); State v. Patrignani, 65 N.J. Super. 303, 167 A.2d 671 \(County Ct. 1961\).](#)
- ² [People v. Welt, 8 N.Y.2d 961, 204 N.Y.S.2d 189, 168 N.E.2d 854 \(1960\).](#)
- ³ [Schenck v. Schenck, 52 La. Ann. 2102, 28 So. 302 \(1900\); Carter Publications v. Davis, 68 S.W.2d 640 \(Tex. Civ. App. Waco 1934\), writ refused.](#)

As to specific statutory exemption of the sale of newspapers, see § 30.

As to the publication, sale, and distribution of newspapers on Sunday as a work of necessity, see § 42.

4 [Handy v. St. Paul Globe Pub. Co.](#), 41 Minn. 188, 42 N.W. 872 (1889); [Sentinel Co. v. A.D. Meiselbach Motor Wagon Co.](#), 144 Wis. 224, 128 N.W. 861 (1910).

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C. Acts and Transactions Permitted or Prohibited

2. Sales

§ 28. Generally

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West's Key Number Digest, [Sunday](#)  5

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[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

Statutes prohibiting merchants, shopkeepers, or other persons from keeping open a store for the purpose of selling wares, merchandise, goods, or chattels on Sunday have been held to include the keeper of a fruit stand¹ or a farmer selling the products from his or her farm.² However, those statutes do not prohibit a store from permitting the public to browse, if sales are not actually made,³ nor do they prohibit advertising goods in Sunday newspapers and taking telephone orders on Sunday to be filled the following Monday.⁴ Similarly, it has been held that those statutes do not prohibit private sales or offers to sell,⁵ at least if they do not violate or tend to violate the public quiet of the day.⁶ Under a statute prohibiting all manner of public selling or offering for sale of any property on Sunday, it has, however, been held immaterial that the sale does not disturb the repose and religious liberty of the community.⁷

Some statutes specifically prohibit the sale of particular items on Sunday,⁸ such as clothing,⁹ motor vehicles,¹⁰ liquor,¹¹ or fresh meats, produce, and groceries.¹²

Footnotes

- 1 [City of Gulfport v. Stratakos](#), 90 Miss. 489, 43 So. 812 (1907).
Generally, as to keeping a shop open, see § 26.
- 2 [Hanks v. State](#), 50 Tex. Crim. 577, 99 S.W. 1011 (1907).
- 3 [Village of River Forest v. Vignola](#), 23 Ill. 2d 411, 178 N.E.2d 364 (1961).
- 4 [Vornado, Inc. v. R. H. Macy & Co.](#), 78 N.J. Super. 102, 187 A.2d 620 (Ch. Div. 1963); [People v. Gimbel Bros.](#), 202 Misc. 229, 115 N.Y.S.2d 857 (Spec. Sess. 1952).
- 5 [People v. Dunford](#), 207 N.Y. 17, 100 N.E. 433 (1912).
- 6 [State v. Fass](#), 36 N.J. 102, 175 A.2d 193 (1961).
- 7 [People v. Kupprat](#), 6 N.Y.2d 88, 188 N.Y.S.2d 483, 160 N.E.2d 38 (1959).
- 8 [Genesco, Inc. v. J. C. Penney Co., Inc.](#), 313 So. 2d 20 (Miss. 1975) (statute prohibited the sale of power-operated shaving and grooming devices, paperback books, hosiery, and picture frames); [Vornado, Inc. v. Hyland](#), 77 N.J. 347, 390 A.2d 606 (1978) (statute prohibited Sunday sale of building and lumber supply materials, furniture, home, business, or office furnishings and household, business, or office appliances).
- 9 [Genesco, Inc. v. J. C. Penney Co., Inc.](#), 313 So. 2d 20 (Miss. 1975) (clothing designed for sports activities); [Vornado, Inc. v. Hyland](#), 77 N.J. 347, 390 A.2d 606 (1978); [State v. Atlas](#), 283 N.C. 165, 195 S.E.2d 496 (1973) (sale of clothing and various other goods).
- 10 [Mosko v. Dunbar](#), 135 Colo. 172, 309 P.2d 581 (1957); [Hobson v. State](#), 484 N.E.2d 601 (Ind. Ct. App. 1985); [McDonald Pontiac-Cadillac-GMC, Inc. v. Prosecuting Attorney for Saginaw County](#), 150 Mich. App. 52, 388 N.W.2d 301 (1986).
- 11 [Am. Jur. 2d, Intoxicating Liquors](#) § 228.
- 12 [Goodman v. Kennedy](#), 459 Pa. 313, 329 A.2d 224 (1974).
As to the constitutionality of classifications of commodities that may or may not be sold, see § 18.

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73 Am. Jur. 2d Sundays and Holidays § 29

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2. Sales

§ 29. Selling as work, labor, employment, trade, or calling

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West's Key Number Digest, [Sunday](#)  4

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[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

Laws prohibiting work or labor on Sunday,¹ although not isolated sales,² and similar prohibitions³ may include Sunday sales.

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Footnotes

- ¹ [City of Topeka v. Crawford](#), 78 Kan. 583, 96 P. 862 (1908); [State ex rel. Smith v. Wertz](#), 91 W. Va. 622, 114 S.E. 242, 29 A.L.R. 391 (1922).
- ² [Benson v. State](#), 47 Tex. Crim. 609, 85 S.W. 800 (1905).
- ³ [Commonwealth v. Goldsmith](#), 176 Mass. 104, 57 N.E. 212 (1900); [Bowen v. Pursell](#), 100 N.J. Eq. 319, 134 A. 665 (Ct. Err. & App. 1926); [State v. Corologos](#), 101 Vt. 300, 143 A. 284, 59 A.L.R. 1541 (1928); [State ex rel. Smith v. Wertz](#), 91 W. Va. 622, 114 S.E. 242, 29 A.L.R. 391 (1922).

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2. Sales

§ 30. Exception of particular sales

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Sunday](#)  5

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[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

Some of the exceptions with respect to the sale of goods and merchandise are generic in character and include a number of items such as drugs;¹ articles of food;² gasoline, motor fuel, or motor oil;³ and newspapers and magazines.⁴ Exceptions that are specific in character do not include similar products or byproducts.⁵

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Footnotes

- ¹ [Penniston v. City of Newnan](#), 117 Ga. 700, 45 S.E. 65 (1903).
As to the sale of drugs as a "work of necessity," see § 42.
- ² [Village of South Holland v. Calumet Auto Truck Plaza](#), 197 Ill. App. 3d 49, 143 Ill. Dec. 749, 554 N.E.2d 684 (1st Dist. 1990) (holding that the sale of a six-pack of cola and an eight-ounce bag of potato chips fell within a restaurant exception in a village ordinance prohibiting the sale of merchandise on Sunday); [People v. Shifrin](#), 301 N.Y. 445, 94 N.E.2d 724 (1950).
- ³ [Rich v. Com.](#), 198 Va. 445, 94 S.E.2d 549 (1956).

- 4 [People v. Corpora](#), 15 N.Y.2d 702, 256 N.Y.S.2d 141, 204 N.E.2d 338 (1965).
As to the constitutionality of classifications of commodities that may or may not be sold, see [§ 18](#).
- 5 [People ex rel. DePaul v. Berkowitz](#), 54 Misc. 2d 156, 281 N.Y.S.2d 449 (City Ct. 1967).

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C. Acts and Transactions Permitted or Prohibited

2. Sales

§ 31. Purchases

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West's Key Number Digest, [Sunday](#)  5

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The act of purchasing is lawful under a statute prohibiting selling on Sunday¹ since Sunday statutes are aimed at the seller and not the purchaser.²

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Footnotes

¹ [Armour & Co. v. Rose, 183 Ark. 413, 36 S.W.2d 70 \(1931\).](#)

² [Commonwealth v. Hoover, 25 Pa. Super. 133, 1904 WL 3396 \(1904\).](#)

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73 Am. Jur. 2d Sundays and Holidays § 32

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C. Acts and Transactions Permitted or Prohibited

3. Sports and Amusements

§ 32. Generally

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West's Key Number Digest

West's Key Number Digest, [Sunday](#)  6(1)

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[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status](#), 10 A.L.R.4th 246

Forms

[Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 12](#) (Answer—Defense—Sport or amusement not within law prohibiting any game tending to immorality)

A legislature may not ban all forms of recreation on Sunday but may only restrain those that have a fair connection with threats to the public health, safety, morals, or welfare.¹ Sunday laws may specifically include various sports, games, and amusements within their prohibitions,² including prohibitions against all sporting activities involving pari-mutuel gambling on Sundays³ or against specific games, such as billiards.⁴ Conversely, a Sunday closing statute may exempt recreation, sports, amusements, entertainment, or exhibitions, or providing services and commodities incidental to those activities, from their operation.⁵

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Footnotes

- 1 Two Guys From Harrison, Inc. v. Furman, 32 N.J. 199, 160 A.2d 265 (1960).
- 2 Town of Foxborough v. Bay State Harness Horse Racing & Breeding Ass'n, Inc., 5 Mass. App. Ct. 613, 366 N.E.2d 773 (1977); People v. Dixon, 188 Mich. 307, 154 N.W. 1 (1915).
- 3 Division of Pari-Mutuel Wagering Dept. of Business Regulation v. Florida Horse Council, Inc., 464 So. 2d 128 (Fla. 1985).
- 4 Kilpatrick v. State, 243 Ga. 799, 256 S.E.2d 900 (1979) (statute prohibited the operation of billiard tables on Sunday).
- 5 City of Euclid v. MacGillis, 117 Ohio App. 281, 19 Ohio Op. 2d 480, 179 N.E.2d 131 (8th Dist. Cuyahoga County 1962).

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C. Acts and Transactions Permitted or Prohibited

3. Sports and Amusements

§ 33. Private sports and amusements

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status](#), 10 A.L.R.4th 246

Forms

[Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 12](#) (Answer—Defense—Sport or amusement not within law prohibiting any game tending to immorality)

Sunday statutes generally permit private sports or games, at least where they are not specifically mentioned in the statutes.¹ Statutes prohibiting public sports² do not inhibit the playing of private sports.³ However, a statute allowed local option elections to ban hunting on Sunday.⁴ Statutes forbidding work, labor, or the exercise of a trade or calling on Sunday may also prohibit the operation of places of amusement and a number of sports activities such as hunting.⁵

Playing golf is not barred under a statute prohibiting public sports or pastimes on Sunday.⁶

Horseback riding is illegal under a statute prohibiting the running of any single horse for any wager or for pastime or amusement.⁷

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Footnotes

- 1 [State v. Prather](#), 79 Kan. 513, 100 P. 57 (1909); [Cheeves v. State](#), 1911 OK CR 90, 5 Okla. Crim. 361, 114 P. 1125 (1911); [Palmetto Golf Club v. Robinson](#), 143 S.C. 347, 141 S.E. 610 (1928).
- 2 [§ 34](#).
- 3 [Cheeves v. State](#), 1911 OK CR 90, 5 Okla. Crim. 361, 114 P. 1125 (1911).
- 4 [Hartley Hill Hunt Club v. County Com'n of Ritchie County](#), 220 W. Va. 382, 647 S.E.2d 818 (2007).
- 5 [White v. Levarn](#), 93 Vt. 218, 108 A. 564, 11 A.L.R. 1219 (1918).
- 6 [Palmetto Golf Club v. Robinson](#), 143 S.C. 347, 141 S.E. 610 (1928).
- 7 [Kreider v. State](#), 103 Ark. 438, 147 S.W. 449 (1912).

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3. Sports and Amusements

§ 34. Public sports and amusements

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[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

Forms

[Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 12](#) (Answer—Defense—Sport or amusement not within law prohibiting any game tending to immorality)

Sunday statutes may specifically prohibit particular sports,¹ including horse racing and pari-mutuel gambling on Sunday.²

Whether an admission fee is charged may be determinative of the question of a violation of a Sunday statute.³

Footnotes

- 1 [State v. Chamberlain, 112 Minn. 52, 127 N.W. 444 \(1910\).](#)
- 2 [Division of Pari-Mutuel Wagering Dept. of Business Regulation v. Florida Horse Council, Inc., 464 So. 2d 128 \(Fla. 1985\).](#)
- 3 [Cheeves v. State, 1911 OK CR 90, 5 Okla. Crim. 361, 114 P. 1125 \(1911\).](#)

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C. Acts and Transactions Permitted or Prohibited

3. Sports and Amusements

§ 35. Movies, plays, and concerts

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[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status](#), 10 A.L.R.4th 246

Forms

[Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 12](#) (Answer—Defense—Sport or amusement not within law prohibiting any game tending to immorality)

The exhibition of motion pictures may be exempted from the operation of the Sunday laws.¹ On the other hand, a Sunday law may specifically prohibit the exhibition of motion pictures.² The exhibition of motion pictures may be unlawful under statutes that prohibit or forbid interludes or common plays,³ exhibition of a theatrical or dramatic performance,⁴ operation of any theater or playhouse,⁵ opening or use of any opera house⁶ or theater,⁷ or keeping open "such other amusements"⁸ or commercialized amusements.⁹

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Footnotes

- 1 Rich v. Com., 198 Va. 445, 94 S.E.2d 549 (1956).
- 2 Power v. Nordstrom, 150 Minn. 228, 184 N.W. 967, 18 A.L.R. 733 (1921); State v. McGee, 237 N.C. 633, 75 S.E.2d 783 (1953).
- 3 Carolina Amusement Co. v. Martin, 236 S.C. 558, 115 S.E.2d 273 (1960).
- 4 Richards v. State, 110 Ohio St. 311, 2 Ohio L. Abs. 340, 143 N.E. 714 (1924).
- 5 Ex parte Bossner, 18 Idaho 519, 110 P. 502 (1910).
- 6 Carrier v. Lynch, 209 Md. 349, 121 A.2d 246 (1956).
- 7 City of West Monroe v. Newell, 163 La. 409, 111 So. 889 (1927).
- 8 Zucarro v. State, 82 Tex. Crim. 1, 197 S.W. 982 (1917).
- 9 Strand Amusement Co. v. City of Owensboro, 242 Ky. 772, 47 S.W.2d 710 (1932).

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[Am. Jur. Pleading and Practice Forms, Sundays and Holidays §§ 13, 14](#)

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D. Exceptions

1. General Principles

§ 36. Generally

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West's Key Number Digest, [Sunday](#)  2

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[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

Exceptions to a general Sunday closing law must bear some relation to the public health, safety, morals, or general welfare;¹ thus, for example, an exception to a Sunday closing law, applicable to licensed liquor stores that were located in municipalities lying within 10 miles of the state's borders, was rationally related to the legitimate purposes of capturing tax revenue, retaining business that would otherwise be lost to neighboring states and promoting public convenience.²

An exception to an ordinance or statute must be construed in connection with the law as a whole and the intention of the lawmaking body with respect to it as determined from the language employed in conjunction with the paramount object of the law.³ To escape the inhibitions of a Sunday closing law, the labor performed must come within its exceptions, and whether it does is ordinarily a question of fact that largely depends on the circumstances of the particular case.⁴ The specific exceptions in a Sunday statute exclude other exceptions.⁵

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Footnotes

- 1 City of Mt. Vernon v. Julian, 369 Ill. 447, 17 N.E.2d 52, 119 A.L.R. 747 (1938).
- 2 Chebacco Liquor Mart, Inc. v. Alcoholic Beverages Control Com'n, 429 Mass. 721, 711 N.E.2d 135 (1999).
- 3 City of Euclid v. MacGillis, 117 Ohio App. 281, 19 Ohio Op. 2d 480, 179 N.E.2d 131 (8th Dist. Cuyahoga County 1962).
- 4 State v. Kidd, 167 Ohio St. 521, 5 Ohio Op. 2d 202, 150 N.E.2d 413 (1958).
- 5 Capital Theater Co. v. Commonwealth, 178 Ky. 780, 199 S.W. 1076 (1918).

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1. General Principles

§ 37. Exceptions in local ordinances

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[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

Exceptions to a general Sunday closing ordinance must bear some relation to the public health, safety, morals, or general welfare.¹ Also, in the absence of a provision in a state statute that grants to municipalities the right to determine what business or labor is necessary and lawful on Sunday, an ordinance declaring a particular business exempt from that statute is void.²

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Footnotes

- 1 [Opyt's Amoco, Inc. v. Village of South Holland, 209 Ill. App. 3d 473, 154 Ill. Dec. 260, 568 N.E.2d 260 \(1st Dist. 1991\), judgment aff'd, 149 Ill. 2d 265, 172 Ill. Dec. 390, 595 N.E.2d 1060 \(1992\); Skag-Way Dept. Stores, Inc. v. City of Grand Island, 176 Neb. 169, 125 N.W.2d 529 \(1964\).](#)
- 2 [State v. Solomon, 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277 \(1965\).](#)

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D. Exceptions

1. General Principles

§ 38. Persons observing day other than Sunday as Sabbath

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West's Key Number Digest, [Sunday](#)  8

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[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

A Sunday law may except from its prohibition persons who are members of a religion who observe a day other than Sunday as their Sabbath.¹ Thus, for example, a Jewish automobile dealer who closed his dealership on Saturday, the Jewish Sabbath, while opening for business on Sunday, was immune from prosecution under a Sunday closing laws.² In the absence of such a statutory exemption, persons observing a day other than Sunday as their Sabbath may not perform acts forbidden by the Sunday laws.³

An exemption from the prohibition against Sunday labor in favor of persons observing a day other than Sunday as their Sabbath does not authorize those persons to perform acts on Sunday that are not covered by that exemption.⁴ However, such an exception does not apply to corporations.⁵

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Footnotes

¹ [Lockwood v. State, 249 Ark. 941, 462 S.W.2d 465 \(1971\).](#)

- 2 [People v. Rosenthal](#), 74 Misc. 2d 724, 345 N.Y.S.2d 377 (Dist. Ct. 1973).
3 [Scoles v. State](#), 47 Ark. 476, 1 S.W. 769 (1886).
 As to whether such laws interfere with free exercise of religion, see § 12.
4 [Commonwealth v. Kirshen](#), 194 Mass. 151, 80 N.E. 2 (1907); [People v. Friedman](#), 302 N.Y. 75, 96 N.E.2d
 184 (1950).
5 [Town of West Orange v. Carr's Dept. Store](#), 53 N.J. Super. 237, 147 A.2d 97 (County Ct. 1958).

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2. Works of Necessity and Charity

§ 39. Generally

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West's Key Number Digest, [Sunday](#)  7

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[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

A Sunday law may except works of necessity and charity from its operation.¹ While it has been held that the failure of a statute to exempt works of necessity specifically invalidates the statute unless an implied exemption of necessities was read into it,² it has also been held that in the absence of such an exception, the nature of the business or the fact that it is a work of necessity or charity, or that it is not unlawful in itself, will be regarded as immaterial and does not constitute a defense to a prosecution for violation of the statute.³

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Footnotes

¹ [Broad-Grace Arcade Corp. v. Bright, 48 F.2d 348 \(E.D. Va. 1931\), aff'd, 284 U.S. 588, 52 S. Ct. 137, 76 L. Ed. 507 \(1931\); Mack Paramus Co. v. Mayor and Council of Borough of Paramus, 228 N.J. Super. 234, 549 A.2d 474 \(Law Div. 1988\).](#)

As to whether the exception of works of necessity and charity violates the Equal Protection Clause, see [§ 16](#).

2 [Gronlund v. Salt Lake City](#), 113 Utah 284, 194 P.2d 464 (1948).

3 [Johnson v. State](#), 93 Tex. Crim. 199, 246 S.W. 1033 (1923).

As to believing that one is performing an exempted "work of necessity" as a defense to prosecution under a Sunday statute, see [§ 49](#).

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2. Works of Necessity and Charity

§ 40. Definition of "necessity"

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status](#), 10 A.L.R.4th 246

Forms

[Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 13](#) (Instruction to jury—Definition of works of "necessity" as within exception to Sunday laws)

The word "necessity" has a flexible meaning, depending on the needs and customs of a particular community at a particular time.¹ However, there must at least be a moral emergency that will not reasonably allow delay and is pressing in nature.²

The necessity that will excuse engaging in work or business on Sunday need not be a physical or absolute necessity, or an imperative or overpowering one, but only a reasonable necessity created by some real or unexpected emergency or uncommon or extraordinary condition³ and includes not merely those things required to furnish the physical existence or safety of person

or property but all work reasonably essential to the economic, social, or moral welfare of the people, viewed in the light of the habits and customs of the age and community in which they live.⁴ The term "necessity" does not mean what is wholly indispensable although it does mean something more than what is merely needful, desirable, or convenient.⁵ The fact that the failure to do something may cause interruption or delay in the ordinary course of business, or some discomfort or inconvenience to the individual affected or to the public, does not make the activity a work of necessity, but it must be something that, if left undone, would work severe hardship or loss or unusual discomfort or inconvenience either to the individual who does the activity or to the persons for whom the individual does it.⁶ Moreover, it should be an unforeseen necessity or, if foreseen, such as could not reasonably have been prevented.⁷

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Footnotes

- 1 [State v. James](#), 81 S.C. 197, 62 S.E. 214 (1908); [Rich v. Com.](#), 198 Va. 445, 94 S.E.2d 549 (1956).
- 2 [Rosenbaum v. State](#), 131 Ark. 251, 199 S.W. 388 (1917); [Ex parte Seward](#), 299 Mo. 385, 253 S.W. 356, 31 A.L.R. 665 (1923); [Francisco v. Com.](#), 180 Va. 371, 23 S.E.2d 234 (1942).
- 3 [Pacesetter Homes, Inc. v. Village of South Holland](#), 18 Ill. 2d 247, 163 N.E.2d 464 (1959); [McAfee v. Com.](#), 173 Ky. 83, 190 S.W. 671 (1917).
- 4 [Rich v. Com.](#), 198 Va. 445, 94 S.E.2d 549 (1956).
- 5 [State v. Kidd](#), 167 Ohio St. 521, 5 Ohio Op. 2d 202, 150 N.E.2d 413 (1958).
- 6 [McAfee v. Com.](#), 173 Ky. 83, 190 S.W. 671 (1917).
- 7 [Van Winkle v. Satterfield](#), 58 Ark. 617, 25 S.W. 1113 (1894); [Ex parte Seward](#), 299 Mo. 385, 253 S.W. 356, 31 A.L.R. 665 (1923).

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2. Works of Necessity and Charity

§ 41. Definition of "charity"

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

Forms

[Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 14](#) (Instruction to jury—Definition of works of "charity" as within exceptions to Sunday laws)

The word "charity" includes everything that proceeds from a sense of moral duty or a feeling of kindness and humanity and is intended wholly for the purpose of the relief or comfort of another and not for one's own benefit or pleasure.¹ To constitute an act of charity, the act that is done must itself be a charitable act, which means that it is given or rendered without compensation.²

Footnotes

- 1 [Bucher v. Cheshire R. Co.](#), 125 U.S. 555, 8 S. Ct. 974, 31 L. Ed. 795 (1888).
- 2 [Bucher v. Cheshire R. Co.](#), 125 U.S. 555, 8 S. Ct. 974, 31 L. Ed. 795 (1888); [Forehand v. Moody](#), 200 Ga. 166, 36 S.E.2d 321 (1945).

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2. Works of Necessity and Charity

§ 42. Acts constituting works of necessity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

Some Sunday statutes have exempted manufacturing establishments that require, of necessity, for a normal production schedule, continuous and uninterrupted operation.¹ Thus, the operation of a factory is a work of necessity where on account of the delicate nature of the product and at least some of the required machinery, it should be kept in continuous operation, for otherwise, there would be great and irreparable injury or severe hardship or loss to the owner of the business.²

Repair work may, under certain circumstances, be considered a work of necessity, such as the operation of a tow truck service.³ The repair of machinery in a factory to prevent the employees from losing their jobs and their wages may be a work of necessity.⁴ However, a contractor repaving a city street is not a work of necessity, in the absence of a provision in the contract requiring Sunday work or such a directive from city officials.⁵ Similarly, repair of the entrance to a public garage is not a work of necessity.⁶

The operation of facilities for supplying light and water to the public and all work incidental to that operation are works of necessity.⁷

Other acts performed on Sundays and holidays that are works of necessity include the monitoring and maintenance of computer operations;⁸ services performed by clergy, physicians, nurses, pharmacists, and undertakers;⁹ preservation or rescue of property that is exposed to imminent danger;¹⁰ and publication, sale, and distribution of newspapers on Sunday.¹¹ While the operation of a drugstore for the sale of medicine comes within an exception for necessity, that exemption does not authorize the sale of other merchandise in the store.¹² Moreover, the sale of drugs is not a work of necessity merely by reason of the character of that product but is permitted only when it is, in fact, a matter of necessity under the particular circumstances.¹³

A car wash may be a work of necessity.¹⁴ The operation of a coin-operated laundry business may also be a work of necessity.¹⁵

Furnishing legal services on Sunday is generally not considered to be a work of necessity.¹⁶

The operation of a department store,¹⁷ playing professional sports,¹⁸ and operation of a place of amusement where admission is charged¹⁹ are not works of necessity.

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Footnotes

- 1 Mullis v. Celanese Corp. of America, 234 S.C. 380, 108 S.E.2d 547 (1959).
- 2 Natural Gas Products Co. v. Thurman, 205 Ky. 100, 265 S.W. 475 (1924).
- 3 Duke v. Mitchell, 153 Miss. 880, 122 So. 189 (1929).
- 4 State v. Collett, 72 Ark. 167, 79 S.W. 791 (1904).
- 5 People v. Lynch, 156 A.D. 601, 141 N.Y.S. 728 (1st Dep't 1913).
- 6 Watkins v. City of Brookhaven, 134 Miss. 556, 99 So. 363 (1924).
- 7 Turner v. State, 85 Ark. 188, 107 S.W. 388 (1907).
- 8 Mack Paramus Co. v. Mayor and Council of Borough of Paramus, 228 N.J. Super. 234, 549 A.2d 474 (Law Div. 1988).
- 9 Donovan v. McCarty, 155 Mass. 543, 30 N.E. 221 (1892).
- 10 Chadwick v. Stokes, 162 F.2d 132, 172 A.L.R. 405 (C.C.A. 3d Cir. 1947).
- 11 State v. Needham, 134 Kan. 155, 4 P.2d 464, 82 A.L.R. 493 (1931); Pulitzer Pub. Co. v. McNichols, 181 S.W. 1 (Mo. 1915).
As to specific statutory exemption of the sale of newspapers, see § 30.
- 12 State v. Bunin, 118 Ohio App. 491, 26 Ohio Op. 2d 6, 91 Ohio L. Abs. 150, 187 N.E.2d 630 (8th Dist. Cuyahoga County 1963).
- 13 State v. Footlick, 2 Ohio St. 2d 206, 31 Ohio Op. 2d 411, 207 N.E.2d 759 (1965).
- 14 State v. Applebaum, 22 Ohio Op. 2d 29, 90 Ohio L. Abs. 246, 187 N.E.2d 526 (Mun. Ct. 1963).
As to the operation of a car wash as a trade or labor, see § 25.
- 15 People v. Welt, 8 N.Y.2d 961, 204 N.Y.S.2d 189, 168 N.E.2d 854 (1960).
- 16 Jones v. Brantley, 121 Miss. 721, 83 So. 802, 8 A.L.R. 1353 (1920) (stating, however, that there are some services that an attorney may lawfully perform on Sunday where the law authorizes certain suits and other legal matters to be done on that day).
- 17 Arlan's Dept. Store of Louisville v. Com., 369 S.W.2d 9 (Ky. 1963).
- 18 Walsh v. State, 33 Del. 514, 139 A. 257, 56 A.L.R. 810 (1927); Crook v. Commonwealth, 147 Va. 593, 136 S.E. 565, 50 A.L.R. 1043 (1927).
- 19 Pirkey Bros. v. Commonwealth, 134 Va. 713, 114 S.E. 764, 29 A.L.R. 1290 (1922).

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2. Works of Necessity and Charity

§ 43. Determination of necessity

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[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

Where a Sunday statute declares that as a matter of law the exemption for works of necessity or charity does not include the sale of specific commodities, that exemption does not necessarily mean that the sale of a commodity not included in the enumeration is a work of necessity; in such a case, it is a matter for the jury to determine whether the commodity is a work of necessity unless in the particular case, reasonable minds could not differ on the question.¹ The standard in determining whether an article is one of immediate necessity must be necessity to the people generally rather than merely the necessity of a particular individual on a particular occasion² unless the statute provides that it is the necessity of the particular customer that should determine whether the sale is necessary under the statutory exemption.³

A statute may designate a particular government officer to issue permits for the operation of certain businesses on Sunday according to what, in the judgment of that officer, is necessary work or labor.⁴

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Footnotes

- 1 [Mandell v. Haddon](#), 202 Va. 979, 121 S.E.2d 516 (1961).
As to whether the question of the necessity of the act is a question of fact or law, see [§ 53](#).
- 2 [State v. Katz Drug Co.](#), 352 S.W.2d 678 (Mo. 1961) (overruled in part on other grounds by, [Harvey v. Priest](#), 366 S.W.2d 324 (Mo. 1963)).
- 3 [Taylor v. City of Pine Bluff](#), 226 Ark. 309, 289 S.W.2d 679 (1956).
- 4 [Weinstein v. Chief of Police of Fall River](#), 344 Mass. 314, 182 N.E.2d 525 (1962).

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2. Works of Necessity and Charity

§ 44. Food, gasoline, and oil

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Sunday](#)  5, 7

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[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

The indiscriminate and general sale of food or food products to all who desire to purchase them, regardless of necessity, does not fall within the exception of Sunday observance laws relating to "works of necessity and charity," even though those commodities are considered as necessities,¹ merely because as a matter of convenience, customers prefer to make their purchases on Sunday rather than a weekday.²

The exception allowing works of necessity or charity permits restaurants to be kept open on Sunday on the ground that the necessities of the public, especially the traveling public, require keeping restaurants open on Sunday,³ but the exception may not be applicable to take-out food.⁴

The sale of gasoline on Sunday may be considered as a work of necessity;⁵ although there is authority that only particular sales may be made as acts of necessity or charity.⁶

Footnotes

- 1 State v. Corologos, 101 Vt. 300, 143 A. 284, 59 A.L.R. 1541 (1928).
- 2 Arnheiter v. State, 115 Ga. 572, 41 S.E. 989 (1902); Borough of Collingswood v. Boyer, 59 N.J. Super. 561, 158 A.2d 227 (County Ct. 1960).
- 3 McAfee v. Com., 173 Ky. 83, 190 S.W. 671 (1917).
- 4 Commonwealth v. Meckel, 221 Mass. 70, 108 N.E. 917 (1915).
- 5 Williams v. State, 167 Ga. 160, 144 S.E. 745, 60 A.L.R. 747 (1928).
- 6 Rhodes v. City of Hope, 171 Ark. 754, 286 S.W. 877, 47 A.L.R. 1104 (1926); Charleston Oil Co. v. Poulnot, 143 S.C. 283, 141 S.E. 454, 60 A.L.R. 750 (1928).

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2. Works of Necessity and Charity

§ 45. Emergency purchases

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Some Sunday closing statutes provide that they do not apply to emergency purchases to protect the health, welfare, or safety of human or animal life.¹ Thus, the purchase of a home for one's family during a severe housing shortage has been held to come within an exception for a work of necessity.²

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Footnotes

¹ [State v. Shoppers World, Inc., 380 S.W.2d 107 \(Tex. 1964\).](#)

² [Chadwick v. Stokes, 162 F.2d 132, 172 A.L.R. 405 \(C.C.A. 3d Cir. 1947\).](#)

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2. Works of Necessity and Charity

§ 46. Acts constituting works of charity

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Works for the advancement of religion and the betterment of morals in a particular locality are works of charity.¹ The exception for works of charity contemplates only doing those acts that are in themselves charitable, and it does not include the operation of a detached enterprise that gives the proceeds of its business to support a charitable institution.² The operation of a motion-picture theater, the proceeds of which were given to a charitable organization, is not a work of charity³ although there is authority to the contrary.⁴ In any case, it is not considered a work of charity if only a part of the net proceeds is donated to charity.⁵

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Footnotes

- 1 [State v. Mead, 230 Iowa 1217, 300 N.W. 523 \(1941\); First M.E. Church of Ft. Madison, Iowa, v. Donnell, 110 Iowa 5, 81 N.W. 171 \(1899\).](#)
- 2 [Rogers v. State, 60 Ga. App. 722, 4 S.E.2d 918 \(1939\); Oliveros v. Henderson, 116 S.C. 77, 106 S.E. 855 \(1921\).](#)

- 3 [Rogers v. State, 60 Ga. App. 722, 4 S.E.2d 918 \(1939\).](#)
- 4 [Williams v. Com., 179 Va. 741, 20 S.E.2d 493 \(1942\).](#)
- 5 [Forehand v. Moody, 200 Ga. 166, 36 S.E.2d 321 \(1945\).](#)

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1. Criminal or Civil Penalties

§ 47. Generally

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Sunday laws prohibiting doing particular acts usually prescribe penalties for violations and are therefore penal in nature.¹ In some jurisdictions, the violation of a Sunday law does not constitute an indictable offense but makes the violator subject to a fine or penalty, recoverable by a summary proceeding before a justice of the peace;² such statutes are regarded as civil in nature, and the actions to recover the penalties are regarded as civil actions.³

An employee of an establishment who commits any of the acts prohibited by the Sunday laws and the manager or owner who is present during the commission of those acts or knows of their commission are both generally criminally responsible.⁴ However, a statute that provides penalties for any person who, being a merchant or shopkeeper, keeps open a store on Sunday in violation of that statute does not apply to a mere clerk in a store but applies to one who is in control or management of the business regardless of whether he or she is in fact the owner and in this capacity keeps open the store on Sunday.⁵

The penalty of forfeiture of all commodities illegally exposed for sale on Sunday and delivery of proceeds to an overseer of the poor is obviously archaic constitutes an inordinate and harsh punishment and is violative of due process and equal protection.⁶

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Footnotes

- 1 [State v. Shoppers World, Inc., 380 S.W.2d 107 \(Tex. 1964\); Rich v. Com., 198 Va. 445, 94 S.E.2d 549 \(1956\).](#)
- 2 [State v. McGee, 237 N.C. 633, 75 S.E.2d 783 \(1953\).](#)
- 3 [People's Appliance & Furniture, Inc. v. City of Flint, 358 Mich. 34, 99 N.W.2d 522 \(1959\).](#)
- 4 [Paramount-Richards Theatres v. City of Hattiesburg, 210 Miss. 271, 49 So. 2d 574 \(1950\).](#)
- 5 [Cusimano v. State, 20 Ala. App. 502, 103 So. 241 \(1925\).](#)
- 6 [Twin Fair Distributors Corp. v. Cosgrove, 85 Misc. 2d 901, 380 N.Y.S.2d 933 \(Sup 1976\).](#)

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1. Criminal or Civil Penalties

§ 48. Complaint, information, or indictment

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West's Key Number Digest, [Sunday](#)  29(2)

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[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246](#)

A criminal offense for violation of a Sunday statute may be punishable only on the presentment or indictment of a grand jury unless, by reason of the punishment specified, it is cognizable by a justice of the peace.¹ Some Sunday statutes provide that the arrest and prosecution of a person for a violation may be initiated by filing an affidavit with a judge or clerk of a court of record with a magistrate or with a prosecuting attorney who in turn files a complaint.²

Although ordinarily an indictment charging a crime in the language of the statute is sufficient,³ an information in the language of a statute, which does not name the acts that are prohibited, does not inform the accused of the nature and cause of the accusation.⁴ The date of the commission of the offense should be alleged, although it need not be alleged that it was a Sunday, since the court will take judicial notice of the fact that a given date was a Sunday.⁵

Criminal intent need not be alleged where the statute is silent on the question of intent.⁶ The names of the consumers to whom prohibited articles were sold or offered for sale on Sunday need not be stated in the indictment.⁷

Generally, if an exception or proviso appears in the enacting clause of the statute or ordinance, that provision is an essential part of the description of the offense or act prohibited, and in such a case, it must be averred in the indictment or information by means of language negating the exception and stating that the accused is not within the exception, but where the exception or proviso is contained in distinct clauses of the statute and clearly does not form a part of the description of the offense, the indictment or information need not negate the exception or proviso, for then it becomes a matter of defense to be pleaded by the accused.⁸

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Footnotes

- 1 [State v. Harr](#), 77 W. Va. 637, 88 S.E. 44 (1916).
- 2 [State v. Footlick](#), 2 Ohio St. 2d 206, 31 Ohio Op. 2d 411, 207 N.E.2d 759 (1965).
- 3 [State v. Solomon](#), 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277 (1965).
- 4 [State v. Hill](#), 189 Kan. 403, 369 P.2d 365, 91 A.L.R.2d 750 (1962).
- 5 [State v. Bergfeldt](#), 41 Wash. 234, 83 P. 177 (1905).
- 6 [State v. Corn](#), 113 Ohio App. 50, 17 Ohio Op. 2d 48, 177 N.E.2d 289 (5th Dist. Stark County 1960).
- 7 [State v. Solomon](#), 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277 (1965).
- 8 [Town of West Orange v. Jordan Corp.](#), 52 N.J. Super. 533, 146 A.2d 134 (County Ct. 1958); [State v. Solomon](#), 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277 (1965).

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§ 49. Defenses

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[Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status](#), 10 A.L.R.4th 246

Forms

[Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 12](#) (Answer—Defense—Sport or amusement not within law prohibiting any game tending to immorality)

It is not a defense to a charged violation of the Sunday statutes that someone else equally guilty has not been prosecuted¹ although it may be claimed that selective enforcement violates equal protection.² Where the defendant establishes unconstitutionally discriminatory enforcement of the Sunday law, the prosecution will be dismissed as a matter of law under the Equal Protection Clause, but the defendant is not immune, under the principle of double jeopardy, from a new prosecution when and if the public authorities undertake a general enforcement of the law.³

The fact that the defendant conscientiously believes in and observes another day of the week as the Sabbath is not a defense to the prosecution for the violation of a Sunday law⁴ unless the statute authorizes that defense.⁵

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Footnotes

- 1 [State v. Solomon, 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277 \(1965\).](#)
- 2 [§ 22.](#)
- 3 [People v. Utica Daw's Drug Co., 16 A.D.2d 12, 225 N.Y.S.2d 128, 4 A.L.R.3d 393 \(4th Dep't 1962\).](#)
- 4 [State v. Weiss, 97 Minn. 125, 105 N.W. 1127 \(1906\).](#)
As to whether Sunday closing laws deprive persons who observe a different day as their Sabbath of their First Amendment right of freedom of religion, see [§ 12.](#)
- 5 [State v. Grabinski, 33 Wash. 2d 603, 206 P.2d 1022 \(1949\).](#)

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§ 50. Multiple offenses

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Under statutes prohibiting labor, business, or opening of places of amusement on Sunday, there generally is only one offense by the same defendant on the same Sunday, and a repetition of the same violation at another part of the day would not render that person subject to more than one prosecution since such statutes contemplate only one offense.¹ There are, however, decisions holding that each act committed on the same day constitutes a separate transaction and a separate offense for which an independent prosecution will lie.² Some statutes specifically provide that every act in violation of the statute must be deemed a separate offense.³

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Footnotes

- ¹ [State v. F. W. Woolworth Co., 154 N.J. Super. 550, 382 A.2d 51 \(App. Div. 1977\); Muckenfuss v. State, 55 Tex. Crim. 229, 116 S.W. 51 \(1909\).](#)

- 2 [State v. Heard](#), 107 La. 60, 31 So. 384 (1902); [Paramount-Richards Theatres v. City of Hattiesburg](#), 210 Miss. 271, 49 So. 2d 574 (1950).
- 3 [Treasure City of Fayetteville, Inc. v. Clark](#), 261 N.C. 130, 134 S.E.2d 97 (1964).

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§ 51. Evidence; burden of proof

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The State has the burden of proving each essential element of a violation of the Sunday laws.¹ Where an exception to a Sunday law is not merely defensive but constitutes an integral part of the offense defined by the statute,² the burden is on the State to allege and prove that the act in question does not fall within the exception since the burden of proving every element of the offense is on the State.³ In such a case, the accused does not have a burden to prove, even by a preponderance of the evidence, that the work done on Sunday was a work of necessity or charity.⁴ However, where the law states that the necessity or charity of the act may be shown in justification of the violation of the law, the burden is on the defendant to show that the act committed is within the exception since in that case it becomes a matter of affirmative defense.⁵

In an action to determine the validity of a Sunday statute, the court will take judicial notice that the enforcement of the statute by criminal process has been sporadic and that a large number of people openly flout the statute with impunity.⁶

Footnotes

- 1 State v. K-Mart, 134 N.J. Super. 76, 338 A.2d 230 (County Ct. 1975), judgment *aff'd*, 141 N.J. Super. 546, 359 A.2d 492 (App. Div. 1976); State v. Atlantic Coast Line R. Co., 149 N.C. 470, 62 S.E. 755 (1908); Pirkey Bros. v. Commonwealth, 134 Va. 713, 114 S.E. 764, 29 A.L.R. 1290 (1922).
- 2 State v. Hill, 189 Kan. 403, 369 P.2d 365, 91 A.L.R.2d 750 (1962); Town of West Orange v. Jordan Corp., 52 N.J. Super. 533, 146 A.2d 134 (County Ct. 1958).
- 3 Williams v. Com., 179 Va. 741, 20 S.E.2d 493 (1942).
- 4 Town of West Orange v. Jordan Corp., 52 N.J. Super. 533, 146 A.2d 134 (County Ct. 1958); Rich v. Com., 198 Va. 445, 94 S.E.2d 549 (1956).
- 5 Rhodes v. City of Hope, 171 Ark. 754, 286 S.W. 877, 47 A.L.R. 1104 (1926); State v. K-Mart, 134 N.J. Super. 76, 338 A.2d 230 (County Ct. 1975), judgment *aff'd*, 141 N.J. Super. 546, 359 A.2d 492 (App. Div. 1976).
- 6 Arlan's Dept. Store of Louisville v. Com., 369 S.W.2d 9 (Ky. 1963).

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§ 52. Admissibility of evidence

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Although other courts have held to the contrary,¹ it has been held by some courts that a defendant charged with violating a Sunday law is entitled to present evidence of it otherwise not being enforced² or of selective enforcement³ to show intentional discrimination in violation of the right to equal protection.⁴

Testimony by members of a legislative body that it was not their intent in passing a Sunday ordinance to include the defendant's activity is not admissible in determining the meaning of the statute⁵ neither is opinion evidence regarding the necessity of a particular act.⁶

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Footnotes

¹ [State v. Solomon, 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277 \(1965\).](#)

² [People v. Utica Daw's Drug Co., 16 A.D.2d 12, 225 N.Y.S.2d 128, 4 A.L.R.3d 393 \(4th Dep't 1962\).](#)

3 [Wolf v. State](#), 661 S.W.2d 765 (Tex. App. Fort Worth 1983), writ refused n.r.e., (Apr. 11, 1984) (but finding
the error harmless where an improper motive for selective prosecution was not suggested).
4 As to lack of uniform enforcement raising equal protection concerns, see [§ 22](#).
5 [Town of West Orange v. Jordan Corp.](#), 52 N.J. Super. 533, 146 A.2d 134 (County Ct. 1958).
6 [Rosenbaum v. State](#), 131 Ark. 251, 199 S.W. 388 (1917).

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§ 53. Questions of law and fact

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It is the province of the jury in Sunday law cases to determine whether a particular article sold is within the scope of the statutory exception.¹

Generally, whether a given act is a work of necessity within the exception of a Sunday law is one of fact to be determined from the circumstances of each case.² In some cases, the courts have approved the rule that where reasonable minds may differ, the question of what constitutes a work of necessity within the Sunday laws is one of fact for the jury although they have added a qualification to the effect that where the nature of the act or work in question is obvious, the question becomes one of law for the court.³ In still other cases, it has been held that whether the act constitutes a necessity within the exception to the Sunday laws is purely a question of law for the court.⁴

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Footnotes

- 1 [City of Birmingham v. Tomberlin](#), 338 So. 2d 1054 (Ala. Crim. App. 1976); [McGowan v. State](#), 220 Md. 117, 151 A.2d 156 (1959), judgment *aff'd*, 366 U.S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961).
- 2 [Francisco v. Com.](#), 180 Va. 371, 23 S.E.2d 234 (1942).
Whether the act done in a particular case is reasonably essential to the economic, social, or moral welfare of the people is ordinarily a question of fact rather than of law. [Francisco v. Com.](#), 180 Va. 371, 23 S.E.2d 234 (1942).
- 3 [Pirkey Bros. v. Commonwealth](#), 134 Va. 713, 114 S.E. 764, 29 A.L.R. 1290 (1922).
- 4 [Arlan's Dept. Store of Louisville v. Com.](#), 369 S.W.2d 9 (Ky. 1963); [Allen v. Duffy](#), 43 Mich. 1, 4 N.W. 427 (1880).

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§ 54. Instructions and verdict

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Forms

[Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 13](#) (Instructions to jury—Definition of works of "necessity" as within exception to Sunday laws)

[Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 14](#) (Instructions to jury—Definition of works of "charity" as within exceptions to Sunday laws)

In a Sunday law case, aside from the usual instructions in a criminal case, the court should instruct on what constitutes matters of defense and as to the meaning of certain terms used in the statute, such as "necessity."¹

A trial court may direct a verdict of guilty in a prosecution for violation of a Sunday law where it is only a misdemeanor punishable by a fine, and the facts are undisputed that the misdemeanor was committed by the defendant without legal justification.²

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¹ [Francisco v. Com.](#), 180 Va. 371, 23 S.E.2d 234 (1942).

² [McKeown v. State](#), 197 Ark. 454, 124 S.W.2d 19 (1939).

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2. Injunction to Prevent Violation

§ 55. Generally

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Injunctive relief is available against violators of Sunday closing law restrictions where the statute provides for both injunctive relief and for fines.¹ However, it has been held that injunctive relief may be beyond the court's powers, such as absent a conviction for the misdemeanor of maintaining a nuisance.²

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Footnotes

- ¹ [City of Warwick v. Almac's, Inc., 442 A.2d 1265 \(R.I. 1982\)](#) (holding, also, that the remedial section of the statute encompassing injunctive relief would be given a liberal construction to effectuate its purposes).
- ² [State v. Channel Home Centers, 199 N.J. Super. 483, 489 A.2d 1225 \(App. Div. 1985\)](#).
As to injunctions restraining the maintenance of a nuisance, see [§ 56](#).

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2. Injunction to Prevent Violation

§ 56. Nuisance

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Some Sunday statutes provide that the operation of any business contrary to its provisions constitutes a public nuisance and that any person may apply to any court of competent jurisdiction for an injunction to restrain that violation.¹ Other statutes provide that repeated violations of the prohibitions² or the sale of certain goods on consecutive days of Saturday and Sunday³ will be deemed a nuisance. Under such statutes, it is not necessary to establish the equitable requisites that are usually essential for the issuance of an injunction,⁴ nor is it necessary to show that any person was disturbed by the activity, but it is sufficient that the forbidden acts were done openly or in such a manner that they could be observed by the public.⁵

Keeping open a place of business and making sales in violation of a Sunday law is not a nuisance per se since as it is lawful to do so on other days; neither is it a nuisance in fact where it is not alleged that it annoys, injures, or endangers the comfort, repose, health, or safety of others; or offends decency; or in any way renders others insecure in life or in the use of property.⁶ However, it has been held that the playing of baseball games on Sunday, in view of the attendant noise and conduct of the spectators, might constitute a nuisance, which may be enjoined at the instance of individuals living in the neighborhood.⁷

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Footnotes

- 1 [Retail Merchants Ass'n of Houston, Inc. v. Handy Dan Hardware, Inc.](#), 696 S.W.2d 44 (Tex. App. Houston 1st Dist. 1985) (holding also that the private enforcement scheme of Texas's Blue Law did not violate due process by creating an irrebuttable presumption that a violation is a nuisance where the law passed due process scrutiny as a valid exercise of the state's police power).
- 2 [Two Guys From Harrison, Inc. v. Furman](#), 32 N.J. 199, 160 A.2d 265 (1960).
- 3 [Clark's-Gamble, Inc. v. State](#), 486 S.W.2d 840 (Tex. Civ. App. Amarillo 1972), writ refused n.r.e., (Feb. 7, 1973).
- 4 [Ralph Williams Gulfgate Chrysler Plymouth, Inc. v. State](#), 466 S.W.2d 639 (Tex. Civ. App. Houston 14th Dist. 1971), writ refused n.r.e., (Oct. 6, 1971).
- 5 [Parker v. State](#), 84 Tenn. 476, 1 S.W. 202 (1886).
- 6 [Motor Car Dealers' Ass'n of Seattle v. Fred S. Haines Co.](#), 128 Wash. 267, 222 P. 611, 36 A.L.R. 493 (1924). The elements of nuisance are discussed in [Am. Jur. 2d, Nuisances §§ 1 et seq.](#)
- 7 [Baird v. Board of Recreation Com'rs of Village of South Orange](#), 108 N.J. Eq. 91, 154 A. 204 (Ch. 1931), rev'd on other grounds, 110 N.J. Eq. 603, 160 A. 537 (Ct. Err. & App. 1932).

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3. Other Methods of Enforcement

§ 57. Quo warranto

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Quo warranto may be instituted to determine whether a corporation has a right to engage in a particular act on Sunday under its charter, and the fact that the Sunday law carries a penalty for its violation does not oust the court of jurisdiction over such proceedings.¹

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Footnotes

- ¹ [Com. ex rel. Woodruff v. American Baseball Club of Philadelphia, 290 Pa. 136, 138 A. 497, 53 A.L.R. 1027 \(1927\).](#)
Quo warranto is generally discussed in [Am. Jur. 2d, Quo Warranto §§ 1 et seq.](#)

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Treatises and Practice Aids

[Williston on Contracts §§ 14:1 et seq. \(4th ed.\)](#)

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III. Effect of Sunday and Holiday Regulations on Private Transactions

§ 58. Generally

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Forms

[Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 19](#) (Answer—Defense—Contract void because delivery was on Sunday)

[Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 21](#) (Instruction to jury—Negotiations on Sunday preliminary to consummation of contract on secular day as not precluding validity)

At common law, and in the absence of any statute to the contrary, contracts executed on Sunday are valid.¹ A contract made on Sunday is not opposed to public policy unless declared so by statute.²

A third person, not a party to the contract, may not dispute its validity on the ground that it was made on Sunday.³

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Footnotes

¹ [Callwood v. Callwood](#), 129 F. Supp. 582 (D.V.I. 1955), judgment aff'd, 233 F.2d 784 (3d Cir. 1956); [Naylor v. Conroy](#), 46 N.J. Super. 387, 134 A.2d 785, 67 A.L.R.2d 689 (App. Div. 1957).

² [Thompson v. Weems](#), 111 F.2d 566 (C.C.A. 5th Cir. 1940); [Rodman v. Robinson](#), 134 N.C. 503, 47 S.E. 19 (1904).

3 [Wilson's v. Jackson, 1928 OK 31, 128 Okla. 299, 263 P. 107 \(1928\).](#)

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73 Am. Jur. 2d Sundays and Holidays § 59

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§ 59. Excuse for not performing contract on Sunday or holiday

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West's Key Number Digest

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Forms

[Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 20](#) (Answer—Defense—Contract void because it required performance of act prohibited on Sunday)

A statute that makes it illegal to do business on Sunday provides a type of impossibility defense when performance of a contract falls due on a Sunday.¹ Other statutes expressly or by implication excuse the failure to perform contracts on Sunday, without prohibiting performance on Sunday.² In the wake or under the influence of these statutes, a common-law rule allowing such an excuse emerged.³ Today, however, the rule providing an excuse, whether common law or based on a statute, is an anachronism, given the amount of commercial activity on Sundays.⁴ The rule excusing a failure to perform on Sunday is therefore rejected in most of the recent decisions unless, of course, it is embodied in a statute.⁵

A state holiday statute, allowing a legal or contractual act falling due on a holiday designated by state statute to be performed on the next business day, did not apply to a national bank's credit card payment due dates since the statute was preempted by a federal banking regulation.⁶

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Footnotes

- 1 [Swiss Bank Corp. v. Dresser Industries, Inc.](#), 141 F.3d 689 (7th Cir. 1998).
- 2 [Swiss Bank Corp. v. Dresser Industries, Inc.](#), 141 F.3d 689 (7th Cir. 1998); [Allstate Ins. Co. v. Stephens](#), 239 Ga. 717, 238 S.E.2d 382 (1977); [Watson v. Kresse](#), 130 N.W.2d 602 (N.D. 1964); [Foray v. Bejcek](#), 1979 OK 169, 614 P.2d 1090 (Okla. 1979); [First Nat. Bank of Oregon v. Mobil Oil Corp.](#), 272 Or. 672, 538 P.2d 919 (1975); [Flowers v. Provident Life and Acc. Ins. Co.](#), 713 S.W.2d 69 (Tenn. 1986).
- 3 [Swiss Bank Corp. v. Dresser Industries, Inc.](#), 141 F.3d 689 (7th Cir. 1998); [Prudential Carolinas Realty v. Cambridge Development Corp.](#), 872 F. Supp. 256 (D.S.C. 1994), judgment *aff'd*, 42 F.3d 1386 (4th Cir. 1994); [Dean v. Freeze](#), 213 Ark. 264, 209 S.W.2d 876 (1948); [State v. Cox](#), 265 N.C. 344, 144 S.E.2d 63 (1965); [Breen v. Rhode Island Ins. Co.](#), 352 Pa. 217, 42 A.2d 556 (1945); [Glover v. Glover](#), 416 S.W.2d 500 (Tex. Civ. App. Eastland 1967), writ refused *n.r.e.*, (Oct. 4, 1967).
- 4 [Swiss Bank Corp. v. Dresser Industries, Inc.](#), 141 F.3d 689 (7th Cir. 1998).
- 5 [Jones v. Georgia Pacific Corp.](#), 90 F.3d 114 (5th Cir. 1996); [Swiss Bank Corp. v. Dresser Industries, Inc.](#), 141 F.3d 689 (7th Cir. 1998); [Green v. Hamilton Intern. Corp.](#), 493 F. Supp. 596 (S.D. N.Y. 1979); [Loyd v. Federal Kemper Life Assur. Co.](#), 518 N.W.2d 374 (Iowa 1994); [Caillouet Land Corp. v. Jolin, Inc.](#), 602 So. 2d 1144 (La. Ct. App. 1st Cir. 1992); [Hartford Acc. and Indem. Co. v. Scarlett Harbor Associates Ltd. Partnership](#), 109 Md. App. 217, 674 A.2d 106 (1996), judgment *aff'd*, 346 Md. 122, 695 A.2d 153 (1997) (rejected on other grounds by, [Developers Sur. and Indem. Co. v. Resurrection Baptist Church](#), 759 F. Supp. 2d 665 (D. Md. 2010)).
- 6 [Miller v. Bank of America, N.A. \(U.S.A.\)](#), 170 Cal. App. 4th 980, 88 Cal. Rptr. 3d 723 (3d Dist. 2009).
As to permissible state regulation of national banks, see [Am. Jur. 2d, Banks and Financial Institutions](#) §§ 105 et seq.

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§ 60. Ratification or adoption

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West's Key Number Digest, [Sunday](#)  15

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[Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 16](#) (Complaint, petition, or declaration—Allegation—Affirmance and ratification of contract on secular day)

The theory that a contract is invalid or illegal merely because it was made on Sunday must be distinguished from other illegal contracts; such a contract may be ratified by subsequent acts done on a secular day recognizing the original contract as valid.¹ It has been held, however, that a contract made on Sunday is absolutely void and cannot be subsequently ratified in any manner so as to give it validity.² The question whether a Sunday contract may be ratified also may turn on whether the contract is void or is merely voidable or unenforceable; thus, where the statute does not expressly prohibit making contracts on Sunday, some courts regard contracts executed on Sunday as merely voidable and capable of being subsequently ratified.³ However, where the statute specifically prohibits the execution of contracts or particular kinds of contracts on Sunday, contracts executed in violation of the prohibition are illegal and may not be ratified so as to be in effect from the beginning although they may be adopted by the parties impliedly and without formality through their subsequent conduct on a secular day, and an express agreement to this effect is not necessary.⁴ For recovery to be possible on a new contract, the parties' subsequent acts must be sufficient to constitute a new contract, either expressly or impliedly,⁵ and subsequent acts merely in execution of the original contract, without any thought by the parties of making a new contract on the terms of the original, is not sufficient.⁶

Footnotes

- 1 Hofgesang v. Silver, 232 Ky. 503, 23 S.W.2d 945, 68 A.L.R. 1481 (1930).
- 2 Ryan v. Gilbert, 320 Mass. 682, 71 N.E.2d 219, 170 A.L.R. 241 (1947); Zitomer v. Kelmenson, 375 Mich. 206, 134 N.W.2d 211 (1965).
- 3 Harris v. Cooper, 1950 OK 327, 203 Okla. 678, 225 P.2d 820 (1950).
As to void and voidable contracts, see [Am. Jur. 2d, Contracts § 10](#), and ratification of voidable contracts, see [Am. Jur. 2d, Contracts § 11](#).
- 4 Hunt v. Rhodes, 369 F.2d 623 (1st Cir. 1966); Catsman v. Mack Intern. Motor Truck Corp. of N.Y., 266 Mich. 542, 254 N.W. 199 (1934).
The rule that void contracts may not be ratified is discussed in [Am. Jur. 2d, Contracts § 308](#).
- 5 Sears v. Pauly, 261 F.2d 304 (1st Cir. 1958).
- 6 Gist v. Johnson-Carey Co., 158 Wis. 188, 147 N.W. 1079 (1914).

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§ 61. Ratification or adoption—What constitutes ratification

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[Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 17](#) (Complaint, petition, or declaration—Allegation—Note delivered and consideration advanced on secular day)

[Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 18](#) (Complaint, petition, or declaration—Allegation—Agreement completed on secular day)

What constitutes ratification within the meaning of the rule permitting ratification of Sunday contracts is largely a question of fact.¹ Generally, since ratification may be express or implied, any subsequent act recognizing the contract as valid, or performing some portion of the contract on a secular day, is sufficient, such as an oral acknowledgment of the contract, performance or a promise to perform,² payment of the consideration,³ acceptance of payment,⁴ or delivery and acceptance of the subject matter.⁵

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Footnotes

- ¹ [Hofgesang v. Silver](#), 232 Ky. 503, 23 S.W.2d 945, 68 A.L.R. 1481 (1930).
- ² [Hofgesang v. Silver](#), 232 Ky. 503, 23 S.W.2d 945, 68 A.L.R. 1481 (1930).
- ³ [A. Helm & Son v. Briley](#), 1906 OK 43, 17 Okla. 314, 87 P. 595 (1906).
- ⁴ [McAuliffe v. Vaughan](#), 135 Ga. 852, 70 S.E. 322 (1911).

5 [P.J. Bowlin Liquor Co. v. Brandenburg, 130 Iowa 220, 106 N.W. 497 \(1906\).](#)

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§ 62. Estoppel

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The doctrine of estoppel generally does not apply to prevent one party from attacking the validity of a contract because it was executed on Sunday where the other party was aware of that fact.¹ A party to an instrument that bears a secular date is estopped to deny its validity on the ground that it was executed on Sunday as against an innocent third party.²

Where a Sunday contract may not be ratified,³ estoppel also does not apply.⁴

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Footnotes

- 1 [International Text Book Co. v. Ohl](#), 150 Mich. 131, 111 N.W. 768 (1907); [Smith v. Mills](#), 199 Miss. 367, 24 So. 2d 864 (1946).
- 2 [Jemison v. Howell](#), 230 Ala. 423, 161 So. 806, 99 A.L.R. 1511 (1935).
- 3 [§ 60](#).
- 4 [Gist v. Johnson-Carey Co.](#), 158 Wis. 188, 147 N.W. 1079 (1914).

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§ 63. Ignorance that other party signed on Sunday

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Generally, a contract executed by one party on Sunday without the other party's knowledge is valid from the innocent party's perspective and may be enforced by that party.¹

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Footnotes

- 1 [Gibbs & Sterrett Mfg. Co. v. Brucker](#), 111 U.S. 597, 4 S. Ct. 572, 28 L. Ed. 534 (1884); [Hathaway v. Porter Royalty Pool](#), 296 Mich. 90, 295 N.W. 571, 138 A.L.R. 955 (1941), opinion amended on other grounds, 296 Mich. 733, 299 N.W. 451, 138 A.L.R. 955 (1941).

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IV. Effect of Sunday and Holiday Regulations on Judicial or Official Acts

A. Court Proceedings

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West's Key Number Digest, [Holidays](#) 5, 6

West's Key Number Digest, [Sunday](#) 30(1) to 30(7)

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West's A.L.R. Digest, [Holidays](#) 5, 6

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[Am. Jur. Pleading and Practice Forms, Sundays and Holidays §§ 4, 5, 6, 7, 8](#)

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IV. Effect of Sunday and Holiday Regulations on Judicial or Official Acts

A. Court Proceedings

1. General Principles

§ 64. Acts on Sunday

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West's Key Number Digest

West's Key Number Digest, [Sunday](#)  30(1)

A.L.R. Library

[Validity of court's judgment rendered on Sunday or holiday](#), 85 A.L.R.2d 595

The common-law rule, expressed by the Latin phrase *Dies Dominicus non est dies juridicus*, is that judicial proceedings may not be held or judicial acts performed on Sunday¹ and that all judicial acts performed on that day are void, irrespective of any statutory declaration to that effect.²

Some statutes have been enacted providing that courts may not be open or transact any business on Sunday, and those statutes have been said to be a substantial enactment of the common-law rule that no judicial act may be done on Sunday.³ However, in a number of jurisdictions, the common-law rule that Sunday is a *dies non juridicus* is not followed,⁴ and in some jurisdictions, statutes have been adopted that modify the common law by permitting particular acts of a judicial character to be performed on Sunday.⁵ For instance, a statute providing that no court shall be open or transact business on Sunday, unless it be for the purpose of receiving a verdict or discharging a jury, but that provision does not prevent issuance and service of such orders as exigencies may require contemplates the issuance of orders or judgments on a Sunday when exigencies may require.⁶ Under a statute providing that a municipal judge may hold court every day except Sundays and legal holidays, Sunday is a nonjudicial day, as a general rule, courts may not sit on Sunday, and an order made on that day is void.⁷

In jurisdictions where the common law prevails, the right or authority to perform any judicial act on Sunday must be derived from a statute,⁸ and a statute conferring such a right should, like any other statute in derogation of the common law, be strictly construed.⁹

Even though a State does not follow the common-law rule that Sunday is a dies non juridicus, a court fully functioning in the trial of cases, involving the attendance of the clerk, bailiff, jurors, and witnesses, and the many activities of such a proceeding, might not only violate the statutes against the performance of common labor on Sunday but also might so outrage the customs of a community as to constitute an abuse of discretion and render the proceedings voidable.¹⁰

The common-law rule that judicial acts may not be performed on Sunday does not extend to ministerial acts.¹¹

Observation:

The common-law rule that Sunday is dies non juridicus means only that judicial acts performed on Sunday are void; the rule has nothing to do with the validity of contracts or the deadlines for performing them unless the performance required by the contract is the commencement of legal proceedings on a day on which the relevant court is not open.¹²

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Footnotes

- 1 U.S. v. Shields, 153 U.S. 88, 14 S. Ct. 735, 38 L. Ed. 645 (1894); Vidal v. Backs, 218 Cal. 99, 21 P.2d 952, 86 A.L.R. 1134 (1933); Smith v. State, 215 Tenn. 314, 385 S.W.2d 748 (1965).
- 2 Shade v. Shade, 252 Ala. 134, 39 So. 2d 785 (1949).
- 3 Jones v. East Meadow Fire Dist., 21 A.D.2d 129, 249 N.Y.S.2d 771 (2d Dep't 1964).
- 4 State v. McElhinney, 88 Ohio App. 431, 45 Ohio Op. 225, 100 N.E.2d 273 (5th Dist. Delaware County 1950); State v. King, 40 S.W.3d 442 (Tenn. 2001) (holding that conducting judicial proceedings on Sunday does not violate the state constitution or any state statute; the issue whether to conduct judicial functions on Sunday rests within the discretion of the trial court; in exercising this discretion, the trial court should be deferential to the preferences of the litigants, witnesses, jurors, and attorneys; must be mindful of the need for every participant in a trial proceeding to be prepared and rested; must respect and accommodate the genuinely held religious view of any litigant, witness, juror, or attorney; and must weigh all of these concerns against whatever pressing need or compelling interest may necessitate a Sunday proceeding).
- 5 Stephens v. Porter, 29 Tex. Civ. App. 556, 69 S.W. 423 (1902).
- 6 State v. Seuferling, 238 S.W.3d 217 (Mo. Ct. App. W.D. 2007).
As to when the offices of the clerks of federal district courts are open and the effect of filing on a Sunday or legal holiday, see Am. Jur. 2d, Federal Courts § 548.
- 7 Wactor v. John H. Moon & Sons, Inc., 516 So. 2d 1364 (Miss. 1987) (further holding that expungement of a prior conviction for possession of marijuana was void when done on Sunday).
- 8 Chester v. Arkansas State Bd. of Chiropractic Examiners, 245 Ark. 846, 435 S.W.2d 100 (1968); Smith v. State, 215 Tenn. 314, 385 S.W.2d 748 (1965).

- 9 [Chester v. Arkansas State Bd. of Chiropractic Examiners, 245 Ark. 846, 435 S.W.2d 100 \(1968\).](#)
- 10 [State v. McElhinney, 88 Ohio App. 431, 45 Ohio Op. 225, 100 N.E.2d 273 \(5th Dist. Delaware County 1950\).](#)
- 11 [Chester v. Arkansas State Bd. of Chiropractic Examiners, 245 Ark. 846, 435 S.W.2d 100 \(1968\).](#)
- 12 [Swiss Bank Corp. v. Dresser Industries, Inc., 141 F.3d 689 \(7th Cir. 1998\).](#)
- As to the validity of contracts executed or performed on Sunday contrary to Sunday closing laws, see §§
58 et seq.

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IV. Effect of Sunday and Holiday Regulations on Judicial or Official Acts

A. Court Proceedings

1. General Principles

§ 65. Acts on holiday

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[Validity of court's judgment rendered on Sunday or holiday](#), 85 A.L.R.2d 595

The courts do not regard statutory or legal holidays as nonjudicial days unless constrained to do so by the terms or the necessary effect of a statute.¹ A legal holiday has only the effect prescribed by a statute;² it is a dies non juridicus only when expressly made so by a statute and even then only to the extent specified in it.³ Thus, a court rule that the clerk's office is not required to be open on legal holidays does not mean that the office must be closed.⁴ Judicial action on a legal holiday is not void.⁵

If, in connection with the declaration of a holiday, certain acts are prohibited on that day, any judicial act outside the terms of the prohibition may be performed then.⁶ Any legal business may be transacted, and any legal act may be performed, on a holiday, other than what is positively or by necessary implication forbidden by the terms of a statute.⁷ Courts may sit and try cases on legal holidays unless the statutes, by force of their terms, or necessary effect, prohibit them from doing so.⁸

In the absence of a statute, Saturday is not a nonjudicial day⁹ unless Saturday afternoon is made a dies non juridicus by statute.¹⁰

Ministerial acts performed on legal holidays do not come within statutes prohibiting judicial acts on such days.¹¹

Footnotes

- 1 [Farrell v. Bendix Corp.](#), 232 So. 2d 419 (Fla. 4th DCA 1970); [Moore v. Dearing](#), 216 Ga. 596, 118 S.E.2d 366, 85 A.L.R.2d 591 (1961).
- 2 [Farrell v. Bendix Corp.](#), 232 So. 2d 419 (Fla. 4th DCA 1970).
- 3 [State v. Thomas](#), 61 Ohio St. 444, 56 N.E. 276 (1900); [A. G. Spaulding & Bros. v. Bernhard](#), 76 Wis. 368, 44 N.W. 643 (1890).
- 4 [Gilliam v. Gilliam](#), 43 So. 3d 615 (Ala. Civ. App. 2010) (relevant to whether a judgment was filed before the judge left office).
- 5 [Arvada 1st Indus. Bank v. Hutchison](#), 15 P.3d 292 (Colo. App. 2000) (holding that the trial court's violation of a statutory prohibition against the transaction of judicial business on a legal holiday, by entering an order reviving a judgment against a debtor on Thanksgiving Day, did not render the order void but, rather, postponed the effective date of the order until the next day the courts were open; despite the statutory violation, the trial court was not divested of its jurisdiction over the subject matter or the parties, and the debtor's due process rights were not violated by the court's action); [Jesup Carpet Factory Outlet, Inc. v. Ken Carpets of LaGrange, Inc.](#), 142 Ga. App. 301, 235 S.E.2d 684 (1977); [Ketterer v. Billings](#), 106 Idaho 832, 683 P.2d 868 (1984) (holding that execution sales conducted on holidays are valid); [State v. Frierson](#), 302 So. 2d 605 (La. 1974), writ denied, 330 So. 2d 310 (La. 1976) (holding that an order for commencement of a criminal trial on a legal holiday was not error where the trial date was set a month in advance, and the complaint was not made until just before the trial was to begin).
- 6 [City of St. Paul v. Robinson](#), 129 Minn. 383, 152 N.W. 777 (1915).
As to courts declaring holidays, see § 2.
- 7 [Moore v. Dearing](#), 216 Ga. 596, 118 S.E.2d 366, 85 A.L.R.2d 591 (1961); [McLaughlin v. Houston-Hudson Lumber Co.](#), 1912 OK 50, 31 Okla. 182, 120 P. 659 (1912).
- 8 [Skolnick v. Hallett](#), 350 F.2d 861 (7th Cir. 1965); [Moore v. Dearing](#), 216 Ga. 596, 118 S.E.2d 366, 85 A.L.R.2d 591 (1961); [State v. Ledet](#), 211 La. 769, 30 So. 2d 830 (1947); [Atlantic City v. Freretti](#), 70 N.J.L. 489, 57 A. 259 (N.J. Sup. Ct. 1904).
- 9 [Riverside Transfer Co. v. Service Drayage Co.](#), 16 La. App. 621, 135 So. 79 (Orleans 1931); [Cousins v. Com.](#), 187 Va. 506, 47 S.E.2d 391 (1948).
- 10 [McGrath v. Langford](#), 35 Cal. App. 215, 169 P. 424 (1st Dist. 1917).
- 11 [Ketterer v. Billings](#), 106 Idaho 832, 683 P.2d 868 (1984) (holding that an execution sale is a ministerial act rather than "judicial business" within a statute providing that judicial business cannot be transacted on a legal holiday); [Havens v. Stiles](#), 8 Idaho 250, 67 P. 919 (1902).

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A. Court Proceedings

2. Particular Acts

§ 66. Civil process

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West's Key Number Digest

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[Validity of service of summons or complaint on Sunday or holiday, 63 A.L.R.3d 423](#)

Forms

[Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 4](#) (Petition or application—For order permitting service of process on Sunday or holiday—Defendant out of jurisdiction on other days)

[Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 8](#) (Motion—To quash summons served on Sunday)

[Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 8](#) (Affidavit—In support of motion to obtain service of process on Sunday or holiday)

Answer—To motion to quash summons—Denying service on Sunday. [Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 8](#)

Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 8 (Order—Directing service of process on Sunday or holiday)

Generally, either by virtue of a statutory prohibition or the common-law principle that Sunday is a dies non juridicus,¹ the issuance, service, or return of a process in a civil action on Sunday is void, since these are judicial acts.² A statutory prohibition on Sunday service of process renders ineffectual service of process made on Sunday in another state even though that other state allows service of process on Sunday.³

Independent of an express statute, there is a considerable diversity of opinion about the validity of the issuance and service of process on Sunday or a holiday. According to some cases, issuance or service of process is a ministerial act and therefore not within statutory prohibitions of the transaction of judicial business on such days.⁴ However, according to other cases, the issuance and service of a summons on Sunday is invalid independently of any statute, since Sunday is a dies non juridicus at common law, and the issuance and service of a summons are judicial acts.⁵ There is also some authority for the view that at common law, service of process on Sunday was valid since such service was regarded merely as an administrative act and not a judicial act.⁶ Some authorities are to the effect that the service of summons on Sunday is not a nullity but a mere irregularity, which is voidable.⁷

Some statutes prohibit the service of civil process or orders on Sunday except in certain cases; service of civil process in violation of such a prohibition is void.⁸ Where such a statute has been repealed, however, service of process made on Sunday is valid.⁹

Statutes permitting the service or execution of writs, processes, warrants, orders, judgments, or decrees on Sunday under certain circumstances, being in derogation of the common law, should be strictly construed.¹⁰

Under the usual Sunday laws relating to process in civil cases, process may not be made returnable on Sunday, and if the return day is Sunday, the writ is void.¹¹ However, it has been stated that a summons returnable on a Sunday or a legal holiday is not void, but the return day will be the first subsequent day in which the court may legally transact business.¹² A summons returnable on Sunday may be amended so as to make the return day the following Monday.¹³

Personal service of process may be a work of necessity where it could not have been perfected on the defendant if not done on Sunday.¹⁴

Service of a summons on a holiday is valid, in the absence of statutes to the contrary, since it is merely a ministerial act.¹⁵

Under a statute establishing the criminal offense of maliciously procuring the service of any process in a civil action on Saturday on a person who observes that day as holy time, legal process served on Saturday on such a person is void.¹⁶

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Footnotes

¹ § 64.

² *Miller v. Johnson*, 466 So. 2d 340 (Fla. 5th DCA 1985) (holding that a summons is "process" within the meaning of the statute providing that civil process may not be served on Sunday); *Andrusick v. City of Apple Valley*, 258 N.W.2d 766 (Minn. 1977) (holding that a notice of appeal constituted "civil process")

within a statute forbidding service on holidays; thus, service was improper and the court lacked appellate jurisdiction); *Foster v. Piasecki*, 259 A.D.2d 804, 686 N.Y.S.2d 184 (3d Dep't 1999).

Eisenberg v. Citation-Langley Corp., 99 A.D.2d 700, 471 N.Y.S.2d 595 (1st Dep't 1984) (process issued in New York served in California).

Calhoun v. Calhoun, 46 Ala. App. 381, 243 So. 2d 37, 63 A.L.R.3d 414 (Civ. App. 1970); *Pedersen v. Logan Square State & Sav. Bank*, 377 Ill. 408, 36 N.E.2d 732 (1941); *Robb v. Ward*, 266 So. 2d 133 (Miss. 1972).
State v. Duncan, 118 La. 702, 43 So. 283 (1907).

State ex rel. Staley v. Hereford, 131 W. Va. 84, 45 S.E.2d 738 (1947).

Burke v. Interstate Savings & Loan Ass'n, 25 Mont. 315, 64 P. 879 (1901).

Pedersen v. Logan Square State & Sav. Bank, 377 Ill. 408, 36 N.E.2d 732 (1941); *Houston Oil Co. of Texas v. Randolph*, 251 S.W. 794, 28 A.L.R. 926 (Tex. Comm'n App. 1923); *State ex rel. Staley v. Hereford*, 131 W. Va. 84, 45 S.E.2d 738 (1947).

A notice of termination of a lease, personally served on an officer of the landlord on a Sunday, was not defective since the lease did not specify that such a notice was to be treated as "legal process," which a statute barred on Sunday. *Glenball, Ltd. v. TLY Coney, LLC*, 57 A.D.3d 843, 874 N.Y.S.2d 128 (2d Dep't 2008).

Trammel v. National Bank of Georgia, 159 Ga. App. 850, 285 S.E.2d 590 (1981) (noting that prior holdings vitiating Sunday service found their authority in a statute that had been repealed).

Harden v. Harden, 125 So. 2d 124 (Fla. 3d DCA 1960).

Lyman v. Walker, 192 Iowa 982, 185 N.W. 607 (1921).

Strowbridge v. Miller, 94 N.W. 825 (Neb. 1903).

Lawrence Harbor Colony v. American Surety Co., 70 N.J.L. 589, 57 A. 390 (N.J. Sup. Ct. 1904).

Evans v. Evans, 229 Ga. 418, 192 S.E.2d 158 (1972) (applying a statute prohibiting Sunday activities but excepting, among other things, works of necessity).

As to works of necessity, see §§ 39 et seq.

Bryant v. Bryant, 40 Ariz. 519, 14 P.2d 712 (1932).

Matter of Kushner, 200 A.D.2d 1, 613 N.Y.S.2d 363 (1st Dep't 1994) (holding, however, that even if maliciously serving process on a Saturday voids service, the complainant failed to sustain his burden of proof under the statute); *Hirsch v. Zvi*, 184 Misc. 2d 946, 712 N.Y.S.2d 238 (N.Y. City Civ. Ct. 2000) (service was effectuated knowingly on an observant Jew on a day that was both the Sabbath and Succoth).

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2. Particular Acts

§ 67. Criminal process

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Holidays](#)  5

West's Key Number Digest, [Sunday](#)  30(4)

Under the common law,¹ and in the absence of statutes to the contrary, criminal process, such as an arrest or search warrant, may validly be served on Sunday or a legal holiday since the element of time is often decisive in the apprehension of suspects and the recovery of property.² Statutes may specifically authorize the execution of a search warrant on Sunday.³ However, where statute requires criminal process to be served in the same manner as process in a civil action, a prohibition of civil service on Sunday also applies to a summons in a criminal action.⁴

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Footnotes

- 1 [People v. Childers](#), 54 Misc. 2d 752, 283 N.Y.S.2d 336 (Sup 1967).
- 2 [Veasey v. State](#), 113 Ga. App. 187, 147 S.E.2d 515 (1966); [Winborn v. State](#), 213 Miss. 99, 56 So. 2d 46 (1952).
As to arrests on Sunday, generally, see [Am. Jur. 2d, Arrest § 72](#).
- 3 [White v. State](#), 81 Okla. Crim. 399, 165 P.2d 151 (1946).
- 4 [Miller v. Johnson](#), 466 So. 2d 340 (Fla. 5th DCA 1985).

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§ 68. Bail bonds

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Holidays](#)  5

West's Key Number Digest, [Sunday](#)  30(5)

The execution of a bail bond or recognizance to secure the release of a person held in custody is valid even though made on a Sunday, since it is considered as an act of necessity and charity, and not judicial business.¹

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¹ [De Orozco v. U.S.](#), 237 F. 1008 (C.C.A. 5th Cir. 1916).

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§ 69. Filing and service of pleadings

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Holidays](#)  5

West's Key Number Digest, [Sunday](#)  30(2)

The filing of a complaint and other pleadings with a court or its clerk is a ministerial act and is not prohibited by a statute prohibiting the transaction of judicial business on Sunday.¹ A court clerk filing pleadings submitted on a holiday is valid since that is merely a ministerial act.²

Since a statute governing the filing of a petition to have an offender declared a sexually violent predator specified the maximum period the offender could be lawfully held beyond the release date, rather than the last day for filing the petition, an offender who was scheduled to be released on a Sunday could not lawfully be held until the next day on the basis that the last day for performing an act fell on a holiday.³

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- ¹ [Havens v. Stiles](#), 8 Idaho 250, 67 P. 919 (1902); [Morgan v. Chandler](#), 906 S.W.2d 584 (Tex. App. Amarillo 1995), writ denied, (Apr. 12, 1996) (holding that original petitions may be filed on Sunday). Court rules requiring the filing of pleadings or other procedural steps, where the last day falls on Sunday, are discussed in [Am. Jur. 2d, Pleading](#) § 861.
- ² [Tully v. Grand Island Telephone Co.](#), 87 Neb. 822, 128 N.W. 508 (1910).
- ³ [People v. Superior Court](#), 159 Cal. App. 4th 301, 71 Cal. Rptr. 3d 462 (4th Dist. 2008).

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73 Am. Jur. 2d Sundays and Holidays § 70

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2. Particular Acts

§ 70. Acceptance of pleas

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Holidays](#)  5

West's Key Number Digest, [Sunday](#)  30(2)

The acceptance of a plea in a criminal case is a ministerial act and may be taken on a Sunday or a holiday.¹ However, a justice of the peace may not receive a guilty plea and pronounce sentence on Sunday, and these proceedings have been held void.²

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Footnotes

- 1 [State v. McElhinney](#), 88 Ohio App. 431, 45 Ohio Op. 225, 100 N.E.2d 273 (5th Dist. Delaware County 1950).
- 2 [Devault v. Sampson](#), 114 Kan. 913, 221 P. 284 (1923).
- As to pronouncing sentence, see [§ 74](#).

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73 Am. Jur. 2d Sundays and Holidays § 71

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§ 71. Jury matters

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Holidays](#)  5

West's Key Number Digest, [Sunday](#)  30(7)

Summoning of jurors in a criminal action is a ministerial, and not a judicial, action within a statute prohibiting the transaction of judicial business on Sunday.¹

Charging the jury is a judicial function, which may not be lawfully exercised on Sunday,² but it is generally recognized that when the case has been submitted to the jury before Sunday, the court may give additional instructions to the jury then deliberating on it on Sunday.³ A trial court may conduct part of the sentencing proceeding, including submitting its charge on punishment to the jury, on a Sunday.⁴ A jury may validly conduct deliberations on Sunday,⁵ and polling the jury is likewise permissible on Sunday.⁶

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Footnotes

- ¹ [State v. Gilbert](#), 8 Idaho 346, 69 P. 62 (1902).
- ² [Smith v. State](#), 215 Tenn. 314, 385 S.W.2d 748 (1965).
- ³ [Williams v. National Sur. Corp.](#), 153 F. Supp. 540 (N.D. Ala. 1957), judgment aff'd, 257 F.2d 771 (5th Cir. 1958); [Rowan & Hope v. Valadez](#), 258 S.W.2d 395 (Tex. Civ. App. San Antonio 1953), writ refused n.r.e.
- ⁴ [Harris v. State](#), 645 S.W.2d 447 (Tex. Crim. App. 1983).
- ⁵ [Lessenhop v. Norton](#), 261 Iowa 44, 153 N.W.2d 107 (1967).

Rules of criminal procedure governing jury deliberations permit a trial judge to allow a jury to continue its deliberations, which had begun on a regular business day, into Sunday. [State v. Merchant, 2003 ME 44, 819 A.2d 1005 \(Me. 2003\)](#).

6 [Williams v. National Sur. Corp., 153 F. Supp. 540 \(N.D. Ala. 1957\)](#), judgment aff'd, [257 F.2d 771 \(5th Cir. 1958\)](#).

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2. Particular Acts

§ 72. Receiving verdict

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Holidays](#)  5

West's Key Number Digest, [Sunday](#)  30(7)

A.L.R. Library

[Validity of court's judgment rendered on Sunday or holiday, 85 A.L.R.2d 595](#)

The rule that judicial acts performed on Sunday are void does not apply to the act of receiving and recording a verdict; consequently, in the absence of any statutory limitation, the verdict in a case submitted to the jury on a proper day for legal proceedings may be lawfully received or recorded on Sunday.¹ In the absence of a prohibitory statute, a verdict may lawfully be received and recorded on a legal holiday.² A court may, on Sunday, set a date for the rendition of judgment or pronouncement of sentence where it receives a verdict on that day as making such an order is incidental to the reception of the verdict.³

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- ¹ [Stone v. U.S.](#), 167 U.S. 178, 17 S. Ct. 778, 42 L. Ed. 127 (1897); [Ball v. U.S.](#), 140 U.S. 118, 11 S. Ct. 761, 35 L. Ed. 377 (1891).
- ² [People v. Browning](#), 132 Cal. App. 136, 22 P.2d 784 (3d Dist. 1933).

3 [State v. Kuhl, 42 Nev. 185, 175 P. 190, 3 A.L.R. 1694 \(1918\).](#)

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§ 73. Rendition and entry of judgment or order

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Holidays](#)  5

West's Key Number Digest, [Sunday](#)  30(7)

A.L.R. Library

[Validity of court's judgment rendered on Sunday or holiday, 85 A.L.R.2d 595](#)

Under the rule that Sunday is dies non juridicus and judicial acts performed on that day are void, the rendition of a judgment or order on Sunday is void.¹ However, exigent circumstances, such as the judge leaving office, may require that a judge enter a judgment on a Sunday, and doing so does not violate a statute providing that no court shall be open or transact business on Sunday, but that provision shall not prevent issuance and service of such orders as exigencies may require.²

With respect to holidays, the general rule is that in the absence of a statute to the contrary, a judgment or order is valid despite the fact that it is rendered or issued on a holiday.³ At most, such judgments may be irregular and voidable.⁴ While under a statute providing that judicial business may not be conducted on holidays, a judgment may not be rendered on a legal holiday,⁵ it has been held that violation of a statutory prohibition against the transaction of judicial business on a legal holiday by entering an order reviving a judgment did not render the order void but rather postponed the effective date of the order until the next day the courts were open.⁶

Under statutes providing that in case a holiday falls on a Sunday then the following Monday will be considered a holiday, a judgment rendered on such a Monday is void.⁷

The entry or docketing of a judgment is a ministerial act, which may be performed on a Sunday⁸ or holiday.⁹

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Footnotes

- 1 [Shade v. Shade](#), 252 Ala. 134, 39 So. 2d 785 (1949).
- 2 [State v. Seuferling](#), 238 S.W.3d 217 (Mo. Ct. App. W.D. 2007) (acquittal of criminal defendant).
- 3 [Jesup Carpet Factory Outlet, Inc. v. Ken Carpets of LaGrange, Inc.](#), 142 Ga. App. 301, 235 S.E.2d 684 (1977) (holding that the fact that a judgment was entered on a legal holiday did not render the judgment void).
- 4 [Freimann v. Gallmeier](#), 116 Ind. App. 170, 63 N.E.2d 150 (1945).
- 5 [People v. Browning](#), 132 Cal. App. 136, 22 P.2d 784 (3d Dist. 1933).
- 6 [Arvada 1st Indus. Bank v. Hutchison](#), 15 P.3d 292 (Colo. App. 2000).
- 7 [Orban v. Northwestern Fire & Marine Ins. Co.](#), 169 Mich. 404, 135 N.W. 252 (1912).
- 8 [Puckett v. Guenther](#), 142 Iowa 35, 120 N.W. 123 (1909).
- 9 [Gilliam v. Gilliam](#), 43 So. 3d 615 (Ala. Civ. App. 2010) (for purposes of determining whether a judgment was filed with the clerk for entry prior to when the trial judge vacated office, the trial judge was not precluded from filing a rendered judgment with the clerk on a legal holiday).

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§ 74. Pronouncement of sentence

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Holidays](#)  5

West's Key Number Digest, [Sunday](#)  30(6), 30(7)

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[Validity of court's judgment rendered on Sunday or holiday, 85 A.L.R.2d 595](#)

It is established both at common law and by some statutes that a sentence may not be validly pronounced on Sunday since this is a judicial act.¹ In those jurisdictions that do not follow the common law, a sentence may be imposed on Sunday.² Some statutes specifically authorize pronouncing a sentence on Sunday by a court of special sessions under certain circumstances.³

Under a statute prohibiting the transaction of judicial business on a legal holiday, a sentence may not be pronounced then.⁴

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¹ [Ball v. U.S.](#), 140 U.S. 118, 11 S. Ct. 761, 35 L. Ed. 377 (1891); [People v. Hewett](#), 40 N.Y.S.2d 869 (County Ct. 1943) (holding that although the judgment is void, the accused has submitted to a trial and may not again be tried on the same charge under the principle of double jeopardy).

2 State v. McElhinney, 88 Ohio App. 431, 45 Ohio Op. 225, 100 N.E.2d 273 (5th Dist. Delaware County 1950).
3 People v. Jackson, 191 Misc. 457, 77 N.Y.S.2d 478 (County Ct. 1947).
4 In re Steiger, 205 Cal. 408, 271 P. 201 (1928).

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2. Particular Acts

§ 75. Adjournment; continuances

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Holidays](#)  5

West's Key Number Digest, [Sunday](#)  30(1)

A court may validly enter an order of adjournment on Sunday if it has authority to sit for any purpose on that day.¹ Court rules sometimes provide that where a hearing is set for a holiday, it must be deemed adjourned to the next day.²

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Footnotes

¹ [Eyer v. State](#), 112 Ark. 37, 164 S.W. 756 (1914).

² [McGrath v. Langford](#), 35 Cal. App. 215, 169 P. 424 (1st Dist. 1917).

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2. Particular Acts

§ 76. Judicial, foreclosure, or tax sales

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Holidays](#)  6

West's Key Number Digest, [Sunday](#)  30(1)

In the absence of a statutory prohibition, a judicial sale is valid even though it was held on a legal holiday or an election day.¹

Since a foreclosure sale is not a judicial proceeding, the holding of such a sale on a holiday does not invalidate it unless prohibited by statute.² Likewise, the conduct of a tax sale on a holiday is not invalid unless made so by statute.³

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- ¹ [Ketterer v. Billings](#), 106 Idaho 832, 683 P.2d 868 (1984); [Kantack v. Kreuer](#), 280 Minn. 232, 158 N.W.2d 842 (1968); [Garner v. Tulsa Bldg. & Loan Ass'n](#), 1928 OK 419, 131 Okla. 232, 268 P. 722, 58 A.L.R. 1269 (1928).
- ² [Kantack v. Kreuer](#), 280 Minn. 232, 158 N.W.2d 842 (1968).
- ³ [U.S. v. 329.22 Acres of Land, More or Less, in Brevard County, State of Fla.](#), 307 F. Supp. 34 (M.D. Fla. 1968), judgment [aff'd](#), 418 F.2d 551 (5th Cir. 1969); [Kantack v. Kreuer](#), 280 Minn. 232, 158 N.W.2d 842 (1968).

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3. Proceedings to Question Validity of Acts

§ 77. Generally

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West's Key Number Digest, [Holidays](#)  5, 6

West's Key Number Digest, [Sunday](#)  30(1), 30(3)

Forms

[Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 5](#) (Motion—To quash summons served on Sunday)

[Am. Jur. Pleading and Practice Forms, Sundays and Holidays § 7](#) (Answer—To motion to quash summons—Denying service on Sunday)

Prohibition will lie to prevent the trial of a personal action at law when the court in which the action is pending does not have jurisdiction over the person of the defendant by reason of the service of process on a Sunday, which is void by virtue of a statute prohibiting such service on Sundays.¹

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¹ [State ex rel. Staley v. Hereford, 131 W. Va. 84, 45 S.E.2d 738 \(1947\).](#)

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3. Proceedings to Question Validity of Acts

§ 78. Waiver and estoppel

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Sunday](#)  30(1)

While there is authority that statutes prohibiting judicial proceedings on Sunday express the public policy of the state and therefore may not be waived,¹ it has also been held that the violation of common-law or statutory prohibitions against judicial acts and proceedings on Sundays or holidays may be waived.² The failure of a defendant in a criminal case to interpose a timely objection to the conduct of proceedings on a holiday waives the right not to be tried on such a day.³

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Footnotes

- ¹ [Brody v. Owen](#), 259 A.D. 720, 18 N.Y.S.2d 28 (2d Dep't 1940); [Davidson v. Munsey](#), 27 Utah 87, 74 P. 431 (1903).
- ² [Burke v. Interstate Savings & Loan Ass'n](#), 25 Mont. 315, 64 P. 879 (1901); [White v. Morris](#), 107 N.C. 92, 12 S.E. 80 (1890); [Morgan v. Chandler](#), 906 S.W.2d 584 (Tex. App. Amarillo 1995), writ denied, (Apr. 12, 1996) (holding that an objection to an irregularity in the filing of a petition because it was filed on Sunday is waived if not raised before filing the answer).
- ³ [State v. Brownfield](#), 160 La. 171, 106 So. 734, 43 A.L.R. 475 (1925); [State v. Cook](#), 78 S.C. 253, 59 S.E. 862 (1906).

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B. Other Official Acts and Proceedings

§ 79. Executive or legislative actions

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West's Key Number Digest

West's Key Number Digest, [Holidays](#)  6

West's Key Number Digest, [Sunday](#)  30(1)

A.L.R. Library

[Validity of administrative proceedings conducted on Sunday or holiday, 26 A.L.R.2d 996](#)

In the absence of a constitutional or statutory provision on the subject, acts and proceedings of an executive,¹ administrative,² or legislative³ character may be performed or conducted on a Sunday or holiday.

The performance of official duties on Sunday by a government officer is not prohibited under a statute prohibiting labor on Sunday.⁴ Neither does the exercise or performance of official powers or duties by the governor or members of the state legislature on Sunday constitute the exercise of a "common avocation" within a statute forbidding the exercise of a common avocation on Sunday.⁵ However, the work of a government assessor in assessing taxes on Sunday violated a statute prohibiting common labor or engaging in one's usual avocation on Sunday.⁶

The performance of official duties may, under certain circumstances, be considered as a work of necessity within the exception to a Sunday law.⁷ Statutes may authorize the transaction of public business on a holiday in cases of necessity; in such a case, the order of a town board laying out a road, adopted on a holiday, will be presumed necessary in the absence of a showing to the contrary.⁸

The designation by statute of a day as a legal holiday does not invalidate official acts performed on that day, unless the statute expressly or by clear implication prohibits the performance of those acts, and the meaning of the statute is not determined by reference to the legal status of Sunday.⁹ A statute commanding the suspension of official business on holidays should be construed so as to prohibit only such acts as are in express terms or by clear implication within the purview of the act.¹⁰ A statute providing that all public offices may be closed on legal holidays has been construed as permissive and as giving public officials the option to decide whether to do so.¹¹ A statute prohibiting the transaction of public business in the public offices of the state and counties of the state on a legal holiday was not applicable to municipal offices.¹²

Applications filed with government offices that are open on Sunday are valid.¹³

The Sunday statutes have generally been regarded as inapplicable to election matters, and it has been held that absentee ballots voted on Sunday are valid.¹⁴ A municipal election may, in the absence of an express prohibition, be held on a holiday.¹⁵ However, a statutory prohibition of service of civil process on holidays applies to personal service of notice of an election contest.¹⁶ Under the rule that a legal holiday only has the effect prescribed by statute,¹⁷ a statutory prohibition of service of civil process on holidays applies to personal service of notice of an election contest, including substituted service of process, but does not prohibit service of civil process by publication.¹⁸

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Footnotes

- 1 Cooper v. Nolan, 159 Tenn. 379, 19 S.W.2d 274 (1929).
- 2 Pelton v. Muntzing, 24 Colo. App. 1, 131 P. 281 (1913).
- 3 Griffith v. City of Vicksburg, 102 Miss. 1, 58 So. 781 (1912); Ex parte Seward, 299 Mo. 385, 253 S.W. 356, 31 A.L.R. 665 (1923).
- 4 Stephens v. Porter, 29 Tex. Civ. App. 556, 69 S.W. 423 (1902).
- 5 Cooper v. Nolan, 159 Tenn. 379, 19 S.W.2d 274 (1929).
- 6 Stellhorn v. Board of Com'rs of Allen County, 60 Ind. App. 14, 110 N.E. 89 (1915).
- 7 Page v. O'Sullivan, 159 Ky. 703, 169 S.W. 542 (1914).
- 8 Ingelson v. Olson, 199 Minn. 422, 272 N.W. 270, 110 A.L.R. 167 (1937).
- 9 Ingelson v. Olson, 199 Minn. 422, 272 N.W. 270, 110 A.L.R. 167 (1937).
- 10 State ex rel. Sizemore v. State Election Bd., 1950 OK 110, 203 Okla. 1, 217 P.2d 805 (1950).
- 11 Hammick v. Gilbert, 24 Tenn. App. 330, 144 S.W.2d 5 (1940).
- 12 Kantack v. Kreuer, 280 Minn. 232, 158 N.W.2d 842 (1968).
- 13 Stephens v. Porter, 29 Tex. Civ. App. 556, 69 S.W. 423 (1902).
- 14 Clark v. Stubbs, 131 S.W.2d 663 (Tex. Civ. App. Austin 1939).
- 15 People ex rel. Russell v. Town of Loyalton, 147 Cal. 774, 82 P. 620 (1905) (disapproved of on other grounds by, State ex rel. Quimby v. City of Reno, 71 Nev. 144, 282 P.2d 1071 (1955)).
- 16 Lebens v. Harbeck, 308 Minn. 433, 243 N.W.2d 128 (1976).
- 17 § 65.
- 18 Lebens v. Harbeck, 308 Minn. 433, 243 N.W.2d 128 (1976).

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73 Am. Jur. 2d Sundays and Holidays § 80

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Sundays and Holidays

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IV. Effect of Sunday and Holiday Regulations on Judicial or Official Acts

B. Other Official Acts and Proceedings

§ 80. Quasi-judicial proceedings

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West's Key Number Digest

West's Key Number Digest, [Holidays](#)  6

West's Key Number Digest, [Sunday](#)  30(1)

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[Validity of administrative proceedings conducted on Sunday or holiday, 26 A.L.R.2d 996](#)

Although there is some authority to the contrary,¹ it has been held that quasi-judicial proceedings of administrative authorities come within the common-law rule rendering void judicial proceedings conducted on Sunday.² Similarly, disciplinary proceedings before an administrative tribunal held on Sunday have been held invalid under a statute prohibiting courts from opening or transacting any business on Sunday since such proceedings are judicial or quasi-judicial in nature.³

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Footnotes

- ¹ [In re Heckman](#), 90 Cal. App. 700, 266 P. 585 (3d Dist. 1928); [School Dist. of Millcreek Tp. v. Com., Human Relations Commission](#), 35 Pa. Commw. 585, 387 A.2d 172 (1978) (holding that, notwithstanding a statute prohibiting service or execution of an order, judgment, or decree on Sunday, the state human relations commission had the power to decide a case on Sunday and issue a final order requiring affirmative action where compliance with the order on Sunday was not required, and the order remained wholly executory until the appeal process had been completed).

- 2 Texas State Bd. of Dental Examiners v. Fieldsmith, 242 S.W.2d 213, 26 A.L.R.2d 990 (Tex. Civ. App. Dallas
1951), writ refused n.r.e.; Ansorge v. City of Green Bay, 198 Wis. 320, 224 N.W. 119 (1929).
- 3 Jones v. East Meadow Fire Dist., 21 A.D.2d 129, 249 N.Y.S.2d 771 (2d Dep't 1964).

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73 Am. Jur. 2d Sundays and Holidays § 81

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IV. Effect of Sunday and Holiday Regulations on Judicial or Official Acts

B. Other Official Acts and Proceedings

§ 81. Publication of statutes and notices

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West's Key Number Digest

West's Key Number Digest, [Holidays](#)  6

West's Key Number Digest, [Sunday](#)  30(3)

The courts have generally held that it is lawful to publish on a Sunday or holiday a statute,¹ an ordinance,² or a constitutional amendment³ since doing so is neither a judicial act nor within the scope of a statute prohibiting labor, business, or work on Sunday.⁴ In some cases, however, the courts have taken the view that the publication of an ordinance on Sunday is void and does not constitute legal notice since Sunday is a dies non juridicus.⁵

The publication of a notice on Sunday is valid in the absence of an express statute to the contrary or where the publication of a Sunday newspaper is lawful.⁶ Likewise, where the publication of a notice on Sunday is expressly authorized by statute, its legality may not be questioned.⁷

Where a notice has the character of process, its publication on Sunday is unlawful under a statute that prohibits the service of process on Sunday.⁸ Where, however, a notice is not in the nature of process, its publication on Sunday, being a ministerial act, is not in violation of a prohibition of the service of process on Sunday.⁹

The publication of a notice on a holiday does not come within statutory prohibitions against the service of legal process¹⁰ or the transaction of public business¹¹ on a holiday.

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Footnotes

- 1 State v. Bertrand, 122 La. 856, 48 So. 302 (1909).
2 City of St. Paul v. Robinson, 129 Minn. 383, 152 N.W. 777 (1915).
3 State v. Alderson, 49 Mont. 387, 142 P. 210 (1914) (overruled on other grounds by, Marshall v. State ex rel.
Cooney, 1999 MT 33, 293 Mont. 274, 975 P.2d 325 (1999)).
4 Black ex rel. Trahair v. Landel Metropolitan Dist., 318 Mich. 376, 28 N.W.2d 270 (1947).
5 Commonwealth ex rel. Bigelow v. Kelly, 250 Pa. 18, 95 A. 322 (1915).
6 Schenck v. Schenck, 52 La. Ann. 2102, 28 So. 302 (1900).
7 Oeth v. Felty, 421 S.W.2d 860 (Ky. 1967); McDannald v. Wilmoth, 82 W. Va. 719, 97 S.E. 132, 13 A.L.R.
663 (1918).
8 Schwed v. Hartwitz, 23 Colo. 187, 47 P. 295 (1896).
9 City of Denver v. Dumars, 33 Colo. 94, 80 P. 114 (1904); Black ex rel. Trahair v. Landel Metropolitan Dist.,
318 Mich. 376, 28 N.W.2d 270 (1947).
10 Malmgren v. Phinney, 50 Minn. 457, 52 N.W. 915 (1892).
11 City of St. Paul v. Robinson, 129 Minn. 383, 152 N.W. 777 (1915).

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